SUPREME COURT OF THE UNITED STATES.

No. ~~185~~ 253

AMBROSE LANFEAR, PLAINTIFF IN ERROR,

vs.

H. L. HUNLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA, EASTERN DISTRICT.

GIDEON, Printer, 511 Ninth street, Washington, D. C.

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THIRD JUDICIAL DISTRICT COURT.

PARISH OF ST. CHARLES.

AMBROSE LANFEAR vs. H. L. HUNLEY, No. 310. Petition filed April 20th, 1857.

To the Honorable the Judge of the Third Judicial District Court of Louisiana, in and for the Parish of St. Charles.

The petition of Ambrose Lanfear, of New Orleans, respectfully represents:

That he is the owner, through sundry mesne conveyances, of the following property, viz:

1st. A certain fraction of land situate in Township XIII. S, Range 21 E, commencing at the base line of said township, and running towards the Mississippi river, to within eighty arpents therefrom, or thereabout, which said fractional section of land, part of a large tract hereafter described, is fully set forth, laid down, and delineated between the blue lines marked A, B, C, D, of the plan hereto annexed, being a copy of the legally approved U. S. survey of Township XIII. and XIV., S, Range 20 and 21, E, and further marked on said plan as "No. 120, The children of Paul Toups."

2d. A certain fraction of land, being a continuation of that firstly described, running from the dividing line of Township XIII. and XIV. S, and extending on the plan already mentioned, between the prolongation of the blue lines A, B, C, D, as far as point E, F, where it reaches Bayou Saut d'Ours; this second fraction of land being marked "No. 37. The children of Paul Toups."

Both of which tracts embrace a length of about 420 chains from their starting point in Township XIII., to said Bayou Saut d'Ours, by a width of about 59 chains, which said width runs up on both sides of a bayou designated on said plan as Petit Bayou, comprising, on both banks of said Petit Bayou, and as far as nine arpents in each of said banks, the whole of the ridge known and designated thereon as "Les Coteaux de France," formerly granted by the Spanish Government to Paul Toups, and afterwards duly confirmed to his heirs by the Congress of the United States. (See American State Papers, vol. 2, p. 324, No. 74.)

3d. A tract of land, situate in the same Township XIV. S, R, 20 E, designated on said plan as "Daspit St. Amand," extending outside the lines of the precedently described tract, from Bayou

Crocodile to Bayou des Cannes, and forming an oblong square, marked at each corner G, H, I, K, comprised between red lines, and having a front (inclusive of the width of Paul Toups' claim, with which it conflicts,) of about 180 chains, by a length of about 265 chains, and also confirmed by the Congress of the United States to the late Daspit Saint Amand. (See American State Papers, vol. 3, page 225, No. 529.)

Petitioner represents that the afore-described tracts of land belong to him in the manner following, to wit:

The land firstly described, by the sale made of the whole original tract by the children of Paul Toups to Daspit Saint Amand, who, in his lifetime, alienated that portion thereof which is comprised between Bayou Saut d'Ours and Le Grand Marais. (See U. S. Survey, hereto annexed.)

The succession of the late Daspit St. Amant sold said land, together with the front plantation, to the late Francis M. Ward.

The succession of the late F. M. Ward sold the whole front and rear tracts, as acquired St. Amand's estate, to William Polk.

And William Polk, by deeds made at different times, sold the whole to your present petitioner, in whose favor the same was confirmed by Act of Congress, approved August 18th, 1856.

Now, petitioner represents that the following-named person, to wit: H. L. Hunley, has of late, and without any color of right or title, taken possession of and settled on said lands, and within the limits aforesaid has committed various acts of waste and trespass, and, altho' duly warned, still continues in holding said possession and committing further acts of waste and trespass, to the great damage and injury of your petitioner, who has already obtained against several other intruders, accomplices and abettors of the above-named defendant, a judgment ordering to be removed as trespassers.

Now, petitioner further represents, that, unless enjoined from proceeding any further in their depredations in, said land will soon become valueless, by the indiscriminate felling of timber and cutting of wood carried on by the said person, and that it is necessary he should be forbidden from further committing said acts of waste, trespass, and depredations.

Wherefore petitioner prays, the premises being considered, that it may please this Honorable Court to issue citation and service of this petition to the above-named person, H. L. Hunley, and that, after due proceedings had, your petitioner may be decreed the exclusive owner of the lands in question and quieted in his possession thereof, and he recover from said defendant the following sum, to wit: one thousand dollars.

1st. Actual damages arising from the waste of property in the felling of timber and other wood, and lawyers and court fees, $500 00
2d. Vindictive damages for the wanton violation and destruction of property, as stated, - - - - - 500 00

Total, - - - - - - - - - Dollars, $1,000 00
with interest and costs of Court and copies.

And praying for such further and equitable relief as the nature of the case may require,

Your petitioner will, and as in duty bound, &c.

(Signed) ST. PAUL & BINNY,
Att'ys for Plaintiff.

Order.

Let a writ of citation issue, as within prayed for.
St. Charles, April 20th, 1857.

(Signed) C. ST. MARTIN, *Clerk.*

Citation.

STATE OF LOUISIANA,
Third Judicial District Court, Parish of St. Charles.

MR. H. L. HUNLEY, of this parish:

You are hereby summoned to comply with the demand contained in the petition of which a true copy accompanies this citation, or deliver your answer to the same, in the office of the Clerk of the Third Judicial District Court in and for the Parish of St. Charles, within ten days after the service hereof.

Witness the Honorable Victor Burthe, Judge of said Court, the 21st day of April, in the year of our Lord 1857.

(Signed) C. ST. MARTIN, *Clerk.*

AMBROSE LANFEAR
vs. } No. 310.
H. L. HUNLEY.

ETAT DE LA LOUISIANE,
Cour du 3ieme District Judiciaire, Paroisse St. Charles.

MR. H. L. HUNLEY, de cette paroisse:

Vous etes sommé de satisfaire à la demande contenue dans la petition, dont une copie est ci annexeé, ou de remettre votre reponse a icelle, au bureau du Greffier de la Cour du Troisième District Judiciaire, en la Paroisse St. Charles, dans les dix jours qui suirront la notification des presentes.

Temoui l'Hon'ble Victor Burthe, Juge de la dite Cour, le 21ieme, Jour du mois d'Avril de l'annee de notre Seigneur, 1857.

(Signed,) C. ST. MARTIN, *Clerk.*

Sheriff's Return.

Filed April 29th, 1857.

Received April 21st, 1857, and next day served the within citation, and a duly certified copy of petition, on H. L. Hunley, by leaving the same at domicil, into the hands of D. A. Long, keeper and guardian of the defendant's interests on the premises, situated on the ridge along the N. O. O. and G. W. Railroad track, at about half a mile from Boutte's Station.

Returned April 23d, 1857.

(Signed) S. BORNE,
D'y Sh'ff.

AMBROSE LANFEAR
vs.
R. N. CHAPMAN AND OTHERS. } No. 310. } Answer.

Filed September 12th, 1857.

To the Honorable the Third Judicial District Court, in and for the Parish of St. Charles.

The defendants in this case, reserving the benefit of all legal exceptions, and of such further defences as they may be entitled to plead hereafter, now come into court by their counsels undersigned, in obedience to the citation served upon them at the suit of plaintiff, and in answer to the petition by him filed, say:

That they deny all and singular the allegations in said petition set forth, except so much of them as may hereafter be expressly acknowledged and admitted.

Defendants aver that they are *bona fide* settlers on the lands they occupy, and by their settlement have acquired a pre-emption right to the same, which they mean to defend and maintain.

They further aver that, whatever be the character of the survey or surveys procured by plaintiff and sought to be enforced against them, the claim under which they were made never extended to these settlements.

The lands settled by these defendants were of the United States, and it is, through the more barefaced perversion of the interest and meaning, and of the clear and well-studied terms of the grant from which the claim now sued upon derives what color of right it may seem to possess, that the plaintiff has obtained the recognition of lines far exceeding the extent of said grant.

The pretension set up by plaintiff to procure the surveys which he sets up against these defendants, arose from a fraudulent con-

trivance of this, based upon a double confirmation *of the same claim*, the one on the application of the children of Paul Toups, to be found in vol. 2d of the State papers, page 324, No. 74, and the other on the application of Daspit Saint Amand, to be found in vol. 3d of the same papers, at page 325, No. 529, by means of which the plaintiff has procured a double survey and measurement of the grant, and built up the assumption of right which he drives, to enforce by this suit.

Defendants aver that the said two confirmations being of the same identical claim, and the author under whom plaintiff sues, to wit:—Daspit St. Amand, who had purchased of the children of Paul Toups on the 17th of November, 1807, having, himself, had it located and surveyed in that very year, (1807,) is estopped from contesting the correctness of that location and survey, and, therefore, must be held to be bound by the same.

Moreover, the plaintiff, himself, sometime in the year 1853, caused a private survey to be made by A. J. Powell, Esq., in which the lands, east of Bayou Crocodile, now claimed, were laid down as public lands, and so recognized by plaintiff, who placed upon the same as many as seven settlers, to hold them for his account, under pre-emption laws of the United States, the whole of which these defendants expect to be able to prove at the trial.

Wherefore defendants pray, the premises being considered, there be judgment against the plaintiff in favor of the defendants.

And as in duty bound, &c.

(Signed) P. SOULÉ & H. L. HUNLEY,

of Counsel for

R. N. CHAPMAN,
JOSEPH MARIONNEAUX,
LEOPOLD BOUTTE,
WILLIAM C. FISHER,
H. L. HUNLEY,
CADET PUYSEGUR,
MRS. GALLAGHER.

AMBROSE LANFEAR vs. ST. AMANT, PUYSEGUR, BELL, H. L. HUNLEY, and others.	No.	Order (Continuance,) December 10th, 1857.

The parties to the cases fixed for trial, this day, not appearing in Court, it is ordered that the cases fixed for trial, this day, be continued.

AMBROSE LANFEAR	No. 310.	Order
vs.		(Case taken up for trial.)
H. L. HUNLEY.		October 7th, 1858.

This case being regularly fixed for trial, was taken up for trial to-day.

HENRY ST. PAUL, Esq., *for Plaintiff.*
SOULÉ & HUNLEY, *for Defendants.*

Evidence offered and testimony taken in open court.

Filed 7th October, 1858.

Plaintiff offers in evidence,
1st. Document L. H., No. 1.
Also, Sale from Toups, L. H., No. 2.
Also, Sale from Daspit St. Amand, L. H., No. 3.
Also, Sale from Ward, L. H., No. 4.
Also, Sale from Polk, L. H., No. 5.
Also, Maps of Townships, 13 and 14.
Also, Sale from Polk to Lanfear.

12th December, 1854.

N. St. Martin, witness for plaintiff, being duly sworn, says, he knows the localities as described on the map, on file. The settlement of defendant is within the blue lines designated on the plan as Paul Toups' lines, within that portion of the blue lines in the rear of the plantation, between the rear of the said plantation and the Bayou Crocodile.

There was a cabin on the place, occupied by Hunley. He had been living upon the tract of land for a long time, and had a portion of it in cultivation. He had been in possession before the last presidential election. The tract of land referred to, is on the Coteaux de France.

Cross-examination.

The place known as Vacherie St. Amand, begins at Bayou Crocodile, on the plan of the township.

Telesphore Baudoin, witness for plaintiff, sworn, says: He is born in this parish; has known Mr. St. Amant; had a vacherie in the rear of his plantation; the vacherie extended from Bayou Crocodile to Bayou Saut d'Ours; between the rear lines of the plantation and Bayou Crocodile there was no place where the cattle could be kept safely without artificial enclosures, but they could be kept safely between Bayous Crocodile and Saut d'Ours; it is very desirable for a planter to have a place where cattle can be kept within natural enclosures; there existed a bridge over Bayou Crocodile and a fence to keep the cattle.

Cross-examined.

The Vacherie St. Amand was between Bayou Crocodile and Bayou Saut d'Ours.

F. St. Martin, witness for pl'ff, sworn, says: Is born in this parish; is over 60 years of age; has known Mr. St. Amand, (Daspit,) who was uncle to witness; has often seen the lands in the rear of St. Amant's plantation; the vacherie belonging to St. Amant was between Bayou Crocodile and Bayou Saut d'Ours; it would have been necessary to erect fences in order to have a vacherie between the rear of the plantation and Bayou Crocodile; to the question, did not St. Amant cultivate that portion of land between the rear of the plantation and Bayou Crocodile, cut wood thereon, graze his cattle, and do all acts of ownership? He answered, no, he did not cultivate it, but on this side of Bayou Crocodile the land belonged to him, or was reputed to belong to him.

Cross-examined.

All the portion of land between the rear of the plantation and Bayou Crocodile were the property of St. Amand, and he was in possession of it; he even had small fences on it.

Lartigue Mongrué, witness for plaintiff, sworn, says: Lives in this parish since 1839; was son-in-law of Daspit St. Amant; knew the property well; the plantation had a front of 12½ or 13 arpents; front on the Mississippi by 80 in depth; there come the line of the township, the whole of which was purchased by Baptiste St. Amand, and afterwards divided between Daspit St. Amand, Fs. Mayronne, and Kinler; after the land contained in that portion of township sold to Daspit St. Amand there was another portion of land which did not belong to him, and which extended from the end of the township to Bayou Crocodile; St. Amant was in possession of it; Mr. Daspit St. Amand frequently told him that he did not own that portion of land, that it did belong to the United States; Dr. St. Amand told witness that he had fences on that portion of land.

Cross-examined.

The fences referred to were at Bayou Crocodile; does not know if there were any on the land between the rear lines and Bayou Crocodile; Daspit St. Amand was from 88 or 90 years of age at the time of his death; he died on the 31st October, 1844; he had been the chief officer of the parish from 1805 to 1812.

O. F. Mayronne, witness for pl'ff, sworn: Is 43 years old; born in this parish, and always resided therein; has known the road from the rear line of the plantation to Bayou Crocodile to be called Le Chemin de la Vacherie; and the property was considered as that of St. Amand.

No cross-examination.

Alfred Mayronne, for pl'ff, sworn: Is thirty-five years old; born in the parish and always resided in it; the road from the rear of the plantation to the Bayou Crocodile was known as "Le Chemin de la Vacherie du viux St. Amand;" witness does not——who the land belonged to; it is not to witness' knowledge that any one did cut timber there some years ago, and before the railroad was built.

Plaintiff introduced testimony of Dorven, as taken in the case of (No. 195) Lanfear *vs.* N. O. O. R. R. & Long, and the testimony of same witness in case No. Louis Ramson & als. *vs.* J. Long and others.

Plaintiff introduced in evidence act of sale by Toups to St. Amant. Also act of sale by Rixner to Paul Toups, 20th November, 1789.

Defendants.

Evidence and testimony filed October 7th, 1858.
Defendant offers in evidence.

1. Transcript from lands office of claim 529, L. H., No. 1.
2. Transcript from land office L. H., No. 2.
3. Transcript from land office, H. L., No. 3.
4. Decision of Commissioners of General Land Office, and, also, Report of Mr. McCulloh.
5. Certificates from land office, proving settlement.
6. Admissions by defendant. It is admitted that all the defendants have all the qualifications of pre-emptors.

Testimony of Leonard, taken by consent.

Also, Testimony of Gillespie, taken by consent.

Lartigue Mongrué, says, that the distance from New Orleans to Lanfear's plantation is 24 or 25 miles.

Paul Maillard, witness for defendant, sworn, says: That he is 56 years old; resides in the parish; has been raised in the neighborhood of St. Amant's plantation. The road which led to the vacherie had been made by the hunters and Paul Toups, and with the permission of the planters, whom it had been asked, and in the rear of whose plantation it passed. It commenced at the plantation of Rixner's. Petit Bayou commenced at the plantation of Rixner. Petit Bayou crosses the property now belonging to witness, who has possessed the same 30 or 35 years. Knows Petit Bayou by that name since fifty years. Never knew it by any other name. Petit Bayou runs along a high ridge as far as Bayou Crocodile. Never saw any one cultivate the bed of Petit Bayou. It is partly covered with wild canes. Petit Bayou was almost always dry, and could not keep cattle as a natural enclosure. Wit-

ness knew the road made by St. Amand for the vacherie was, at times, impassable, and he had to make another to meet the one made by the hunters.

Witness has built a road from the river to the railroad, about two or three years ago.

There were places very low which had to be filled up to make the road passable. The low portion, on which he made that road, extends very low towards the swamp. The vacherie commenced at Bayou Crocodile and extended to Bayou Saut d'Ours. Mr. St. Amand had constructed a fence on the other side of Bayou Crocodile. Bayou Crocodile commences at a prairie and ends towards a prairie. There are several marshes in its course. The Bayou Crocodile is about one-fourth of an arpent wide, and always deep. Petit Bayou is very shallow.

Cross-examined.

Cannot say in what year Paul Toups sold to St. Amand.

Defendant introduces testimony of Polk, under commission. Also testimony of Bernard.

Introduced by Plaintiff.

Evidence comprised in the printed memorial of A. Lanfear. Also, Original Petition and Bond of Polk.

No. 310.

AMBROSE LANFEAR	}	Document L. H.
vs.		No. 1.
H. L. HUNLEY.	}	Introduced by Plaintiff.

Filed October 7th, 1858.

No. 74. Les enfans de défunt, Paul Toups, par sa notice presentée le 31 Decembre, 1806, réclame une terre de 18 arpents de face sur la profondeur de deux lienes et demée, située à trois lienes et demie du fleuve, dans l'endroit nommé le Coteau de France, dans la Paroisse St. Charles, des Allemands sur la rive gauche en montant, a environ ouze lienes de la ville ainse qu'il est expliqué au titre suivant.

A. Monseigneur, Le Baron de Carondelet, Brigadier des Armées de sa majesté, Gouverneur General de la province de la Louisiane, &c., &c., &c., supplié tres humblement, Paul Toups, habitant de la Cote des Allemands, Paroisse St. Charles, expose à votre autorité Monseigneur, qu'ayant depuis trois armeés consecutives essuyeés des pertes considerables par le manque de recoltes, et mortalité d'esclaves, se trouvant par ces accidents imprevus obéré par lesdettes, desirant j'faire honneur, il serait contraint de met-

tre en vente son habitation, qu'elle est sa seule res source pour la subsistance de sa famille, áces causes le suppliant aurait recours à votee clemence, Monseigneur, pour qu'il vous plaise daigner lui conceder a titre de propriété, une terre appartennant au domaine de sa Majesté, (que Dieu garde,) pour la dite terre faire valoir, et etablir une vacherie laquelle situeé en l'endroit nommé les Coteaux de France, distante d'environ ouze lienes de cette capital et environ trois lienes et demie du fleuve sur l'autre rive arrivant a un Bayou nommé Crocodile lequel allant parallellement avec le fleuve, a prendu la dite terre depuis la traverse du sus dit Bayou, Jusqu á un grand marais gissant deniere le Bayou aux Cannes, ce qui forme ane langue de terre d'enniron seize on dix huit arpents dans sa longueur moyenne, sur ane profondeur d'environ deux lienes et demil borné d'un coté par des praieries tremblantés es de l'autre par des Lacs entre coupés de Joncherès Grace que le suppliant espère de votre Autorité, Monseigneur, et ne cessera d'adresser Journellement se voeux au Ciél pour la conservation de vos Jours, A la Nouvelle Orleáns le 21 9bre Mil sept cent quatre vingt quinze, Paul Toups.

NUEVA ORLEANS, 12 *de Marzo de* 1796.

Ela germenser general de esta provincia del particular nombrado por este esta bleura esta parte sobre de la lengua de Tierra de dies y ocho arpanesen su ancho medio y sobre las profundedad de los leguas y medio siem preque como expresa, las tierra que lindan sean prados movedizos ô pantanos, y no causando perfencio alguno baxo enxo supuesto se extendiran a continuation las diligencias deapeo que me remitira, para proveer a continuation las diligencias deapeo, que me remitira para proveer a linteresado del correspondiente titulo en formo.

EL BARON DE CARONDELET.

No. 74. The children of Paul Toups, deceased, claim a tract of land, situate in the county of Acadia, at the place called les Coteaux de France, at about the distance of three and a half leagues from the Western bank of the Mississippi, containing eighteen arpents in front, and a depth of two leagues and a half.

Paul Toups, the father of claimants, obtained from the Baron de Carondelet a regular warrant of survey for this land in the year 1796, for the purpose of establishing a vacherie, and the conditions of the warrant of survey having been complied with on his part, confirmed.

JOSHUA LEWIS,
THOS. B. ROBERTSON.

LAND OFFICE, NEW ORLEANS.

May 14*th*, 1855.

I hereby certify that the foregoing is a true and correct copy of the evidence filed in this office, with notice of the claim of the children of Paul Toups, deceased, taken from the records of this office; and I further certify, that the said claim appears to have been duly confirmed by the old Board of Commissioners under No. 74.

(Signed,) LOUIS PALMS,
Register.

No. 310.

AMBROSE LANFEAR } Document, L. H.
vs. } No. 2.
H. L. HUNLEY. } (Introduced by Plaintiff.)
Filed October 7th, 1858.

Vente de terre par les Hiers Toups à Mr. Daspit St. Amand. } Mr. Jourd hui dix Sept. du mois de Novembre de l'anneé Mil huit cent Sept. de Notre Seigneur, et la trente deuxième de l'Independance Americaine.

Pardevant nous Pierre Bauchet St. Martin, capitaine de Milice et Jude de la Paroisse de Saint Charles, compté de la Cote des Allemands et en prisence des sieurs Charles Perret et Charles Aimee D'Arinsbourg, nos temoins soussignés ont comparu les sieurs Frederick Toups, George Toups, et Frederick Mathis, tous trois heritiers de feu Paul Toups, demeurant en cette Paroisse, et tous majeurs, lesquels vendent cedent et transportent au Sieur Daspit St Amand ici present et stipu lant pour lui, ses hoirs et ayant cause.

Une Terre franche de dettes et d'hi potheques située dans cette Paroisse et sur la rive droite du fleuve, de la contenance d'environ seize a dix huit arpents dans sa largeur moy une sur une longueur d'environ deux lieues et demi, borné d'un coté par despreries tremblants et de l'autre par des lacs entrecoupée—la dite Terre nommée les coteau de France, distante de la capital d'environ ouze lieues, laquelle leur avait été concédée par le Baron de Carondelet, Gouverneur de cette province, en l'annee Mil sept cent quatre vingt quinze, la meme que le dit Paul Toups, a etablie en vacherie, et dont l'acquereur nous a dit avoir une pleine et parfaite connaissance. Laquelle vente est faite pour le prix et moyennant la somme de six cents piastres, trois cent piastres out été payées à la oue de nous comptant, en especes bonnes et sonnantes et ayant coms, dont le vendeur content et satisfait quittent l'acheteur, et les troies cents autres piastres payables à la vente du sucre de la récolte de l'annie prochaine Mil huit cent huit, voulant les vendeurs que le Sieur Antoine Daspit St. Amand, Jouisse paisiblement de la dite propriété comme d'un bien a lui appartenant et se desistant en sa fa-

veur de tous les titres droits et actions qu'ils avaient sur la dite terre ou propriété telle qu'elle se comporte dans le moment. Promettant les vendeurs de faire jouir paisiblement l'acheteur renonçant àtoules reserve et exception, empechement, trouble et eviction generallement quelconque.

Fait et passé au greffe de nótre jurisdiction, le mois jour et au que dessus, et ont signé avec nous les vendeurs à l'exception du Sieur Frederick Mathis qui nous a déclaré ne savoir sigrier dont nous Juge donnous foi.

(Signé) CHARLES AIMEÉ DARENSBOURG, FREDERICK TOUPS & GEORGE TOUPS, ANTOINE DASPIT ST. AMAND, Pue Bchet St. MARTIN.

Pour copie conforme.
Paroisse St. Charles, 27 Juin, 1855.
(Signed) EMILE TASTET, *Recorder.*

AMBROSE LANFEAR vs. H. L. HUNLEY. — No. 310. — Document L. H. No. 3. (Introduced by pl'ff.)

Vente de terre par Sr.

Ore St. AMAND, en sa qualité, à F. M. WARD. — Etat de la Louisiane, Paroisse St. Charles.

Au jourd hui vingt septième jour du mois de Decembre de l'anneé mil huit cent quarante cinq et la soixante dixiéme de l'Independance des Etats Unis d'Amérique.

Pardevant moi François chaix juge dans et pour la Paroisse St. Charles, y résidant et y exerçante les fonctions de notaire public, et en presence des témoins ci-aprés nommés et sonssignés.

A personellement comparu, le Sieur Onésiphore St. Amand, domicilié en cette paroisse agis sant aux présentes en sa qualité d'executeur testamentaire de feu Sieur Antoine Daspit St. Amand.

Sequel comparant es qualitié, má dit et déclaré, qu en vertu et conformement a un ordie ou decrèt de l'honorable cour des preures pour la Paroisse St. Charles en date du vingt Septembre dernier (1845) et aprés les delais, avis et publications vonlues par la loi, il a été procédé par le ministére du Juge ex officio encanteur public pour cette paroisse, le Lundi, 27 Octobre dernier, (1845,) a la vente á l'encan des biens immeubles dépendant de la succession du dit feu Sieur Antoine Daspit St. Amand, situés en cette paroisse, et qu á cette vente publique Mr. François Marion Ward, par son agent Mr. Edouard Forstall, comme plus fort et dernier en cherisseur, sétant rendu adjudicataire.

1o. D'une terre ou habitation ci après plus amplement décrite et désigneé pour prix et somme de trente mille piastres.

2o. D'une autre terre appeleé "Vacherie" également ci après amplement décrite pour prix et somme de quatre mille piastres, ces deux sommes faisant collectivement celle de trente quatre mille piastres, ($34,000 00,) payable conformement aux termes clauses et conditions au noncés au jour de la dite vente a l'encan savoir: en trois termes égaux, à un, deux et trois ans de crédit du jour de la vente à l'encan, en billets endossés à la satisfaction de l'éxécuteur testamentaire de la succession divisés par coupons, assurés par hypotheque spéciale jusqu á parfait paiement, et a defaut de paiement a leur echian ce, les dits billets devant porter huit pour cent d'interet l'au du jour de leur échéance jusqu á parfait paiement anisi que le tout se trouve amplement décrit dans le procés verbal de la dite vente a l'encan déposé pour recours au greffe de cette paroisse.

Le dit Sieur Onésiphore St. Amand, es qualité, voulant en consequence fourner au dit Sieur F. M. Ward un titre aussi complet que possible aux terres a lui adjugeés a la vente a l'encan préciteé, déclare par ces présentes vendee, ceder, transporter, quitter et delais ser, dés à présent et a toujours, sous toutes les garanties de droit, et avec substitution et subrogation à tous les droits, titres de propriétés recours et actions en garantié que possède ou que pourrait posseder la succession de fui Sieur Antoine Daspit St. Amand, contre tous précédents vendeurs et proprietaires.

Au dit Sieur Francis Marion Ward, domicilié en la ville de la Nouvelle Orleans ici-present, et ce acceptant pour lui, acquéreur, ses héritien, successeurs ou ayant cause.

1o. Une terre ou habitation situeé, en cette Paroisse St. Charles, sur la rive droite du fleuve Mississippi; à environ vingt six melle de la Nouvelle Orleans, bornée du coté d'en haut par une terre appartenant à Mr. Honore Doussan, et du coté d'en bas par celle de Mr. Pierre Kinler, la sus dite habitation mesurant douze arpents et vingt toises de face au fleuve plus ou moins sur quatre vingt arpents de profondeur; ensemble la triple concession provenant de la vente publique faite a la Nouvelle Orleans des terres appartenant au Gouvernement le tout conformement aux titres. Ensemblé aussi toutes les Batisses, maisons constructions, bar rières, &c., qui se trouvent sur ou appartienment a la dite habitation, à l'exception de celles reservées au jour de la vente a l'encan.

2o. Une terre appellée "Vacherie" située derrière l'habitation principale ci dessers de crite, a environ neuf milles du fleuve et mesurant environ vingt huit arpents de face au Bayou Crocodile sur une profondeur s'etendant entre legries presque parallelles Jusquau "Sant d'Ours," le tout conformement aux tities et plan de la dite terre.

La presente vente est faite et acceptee pour et moyennant la

somme de Trente quatre mille piastres, prix d'adjudication des susdites propriétes, payable conformement aux termes, clauses et conditions ci dessur relatés.

En consequence le dit Sieur Francis Marion Ward, a tout presentement fourni soix ante Sept. billets datés du vingt Sept. Octobre, 1845, souscrits par lui à l'ordre de et endossés par Mr. Ambrose Lanfear et des valems suivantes, savoir; Dix huit billets de douze cent cinquante neuf piastres $\frac{25}{100}$ chaque, six desquels sont payables à un au, six a dux aus et six à trois aus de date, neuf billets de la somme de quatre cent dix neuf 25 $\frac{81}{100}$ piastres chaque, trois desquels sont payables à un au, trois à deux aus, et trois a trois aus de date; dix huit billets de la somme de deux cent neuf piastres $\frac{81}{100}$ chaque, six desquels sont payables à un au, six à deux aus et six a trois aus, de dàte; vingt et un billets de ceut soix ante dix neuf piastres $\frac{89}{100}$ chaque, sept desquels sont payables à un au, sept à deux aus et sept à trois aus de date; les susdits billets domicilies en la maison de commerce de Ambrose Lanfear, à la Nouvelle Orleans, après avoir été dument ségnés et paraphes "Ne varietr" par le Jude notaire sonssigné, sous la dàte du ce Jour, pour en constater l'identite avec le present acte, out été remis au dit St. Onesiphore St. Amand es qualité qui le reconnait.

Pour assurer le paiement ponctuel de ces billets a leur échéance, les propriétés, objets des présentes, sout et demeurent specialement affectes, obligees et hypothequéss, en faveur du dit Sieur Onesiphore St. Amant, es qualité, ou de tout porteur des dits billets.

D'apres un certificat que Je déclare ici donner en ma qualité de Juge "ex officio" conservateur des hypotheques, dans et pour la Paroisse St. Charles il n'existe sur mes Régistres ancune inscription d'hypotheque, à la date de ce Jour, contre la succession de feu Sr. Antoine Daspit St. Amand, sur les propriétés objets des presentes:

Dont acte; Fait et passé, en mon office, à la paroisse St. Charles, les Jour, mois et au que dessus, en présence de Messrs. Seraphin Brou et Lartígue Mongrué, tímoins competents et requis, lesquels anisi que les comparans out signé aux présentes avec mos Juge notaire sus dit après lecture faite.

(Signé) ORE ST. ARMAND, F. MARION
" WARD, SÉRAPHIN BROU, Jm Bte.
" LARTIGUE MONGRUÉ—F. CHAIX.
Juge et Notaire Pub.

Pour copié conforme à l'original déposé en mon office pour recours.

Paroisse St. Charles, le 7 Octobre, 1857.
(Signed) EMILE TASTET,
Recorder.

AMBROSE LANFEAR
vs.
H. L. HUNLEY.
No. 310.

Document.
L. H., No. 4.
(Introduced by Plff.)

5th August, 1848.

Sale of plantation, slaves, &c., by L. C. Duncan, in his capacity to William Polk.

Filed October 7th, 1858.
State of Louisiana,
Parish of St. Charles.

Be it known that on this day, the fifth of the month of August, in the year of our Lord one thousand eight hundred and forty-eight, being the seventy-third year of the Independence of the United States of America,

Before me, François Chaix, Recorder, duly named, appointed, and sworn, in and for the Parish of St. Charles, State of Louisiana, aforesaid, and in the presence of the witnesses hereinafter named and undersigned,

Personally came and appeared Mr. Lucius Campbell Duncan, residing in the City of New Orleans, herein acting as Dative Executor of the late FRANCIS MARION WARD,

Which appearer, in his aforesaid capacity, said and declared that by virtue of and in obedience to an order of sale, bearing date the fourteenth day of June last, directed by the Honorable the Second District Court of New Orleans, in the matter of the estate of the late *F. Marion Ward*, to the Sheriff of the Parish of St. Charles, and ordering to said Sheriff to proceed, after the usual delay and publications, to the sale at auction of a certain tract of land situated within this parish, and belonging to the estate of said late Francis Marion Ward, at the terms and conditions hereinafter mentioned;

And that said delays being elapsed, and the publications made in conformity with law, as it appears from a certified copy of the process verbal of the sale at auction, made by the Sheriff aforesaid, on the 5th day of August instant, pursuant to said order, which copy is annexed for reference to an act executed this day, before the undersigned Recorder, and bearing sale from said *Lucius* C. Duncan, in his capacity to Mr. *William Polk*, he, the said Sheriff, did sell at auction, on the said 5th August, 1848, the tract of land hereinafter more fully described, belonging to the estate of the said late Francis Marion Ward, at the following terms and conditions, to wit:

The purchaser to assume the payment of two promissory notes, drawn by Mr. Pierre Mayronne to the order of Mr. Pierre Maillard, dated 16th March, 1847, for the sum of five hundred dollars each, payable at Office of the Recorder of this parish: the first on the 16th day of March, 1849, and the second on the 16th day of March, 1850; said two notes countersigned "*Ne Varietur*" by the under-

signed Recorder, and secured by privilege and mortgage on the said tract of land hereinafter described, and the balance of the price of adjudication, if any, payable cash. As the highest and last bidder became the purchaser of the property, slaves, &c., hereinafter fully described, for the sum of fifty thousand dollars ($50,000) and assumption hereinafter expressed.

Now, therefore, the said Lucius C. Duncan, in his aforesaid capacity, in confirmation of said adjudication, does, by these presents, transfer, assign, convey, and set over

Unto said *William Polk*, of the Parish of St. Charles, here present and accepting for himself, his heirs and assigns, to a certain tract of land, established and cultivated as a sugar plantation, situate in this Parish of St. Charles, on the right bank of the Mississippi river, at about twenty-six miles above the City of New Orleans, bounded on the upper side by lands belonging to Mr. Honore Doussan, and on the lower side by the property of Mr. Pierre Kinler, said plantation measuring twelve arpents and 20 toises, more or less, front to the river by about eighty arpents in depth, together with the standing crop, now pending by the roots, and consisting of 210 arpents of canes, plant and ratoons.

Also, together with all the buildings and improvements existing on said plantation, and consisting mainly in sugar and draining-houses, barns, stables, and negro cabins, &c.

To a triple concession situated in the rear of the plantation first above described, and resulting from the sale made at the City of New Orleans on the 12th of November, 1830, of the lands belonging to the Government of the United States.

4o. The following twenty-five slaves, &c.

The present is made and accepted for and in consideration of the sum of fifty thousand dollars, cash price of adjudicature above stipulated, payable in the manner above specified and assumption as above expressed.

Now, therefore, said William Polk, purchaser, in compliance with said conditions, promises and binds himself to pay, in the discharge of the estate of the said late *Francis M. Ward*, twenty-two promissory notes, subscribed by said Francis Marion Ward, to the order of and endorsed by Mr. Ambrose Lanfear, dated the 27th October, 1845, payable at the counting-house of said Ambrose Lanfear, in the City of New Orleans, on the 27th day of October next, (1848,) amounting together to the sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents, countersigned by the undersigned Recorder, then Parish Judge and Notary Public ex-officio for the Parish of St. Charles, and secured by privilege and mortgage on the properties above described, in the paragraphs No. 1, 2, and 3.

And for the balance of the purchase-price, say the sum of fifty thousand dollars, ($50,000,) said Lucius C. Duncan, in his aforesaid

capacity, does hereby grant by these presents, in favor of said purchaser, full acquittance and discharge.

According to a certificate bearing date this day, annexed to these presents for reference, and delivered by the undersigned in his capacity of Recorder of Mortgages for this parish, it appears that there does not exist at the date hereof any mortgage whatever, recorded in the name of the late Francis Marion Ward, against the slaves mentioned in paragraph No. 4.

And that there exist no other mortgage at the same date, in the name of said late F. M. Ward, against the properties above described in paragraphs No. 1, 2, and 3, with the exception of the conventional one, which by act executed before the undersigned Recorder, then Parish Judge and Notary Public for the Parish of St. Charles, under date the 27th December, 1845, the said late Francis Marion Ward has granted in favor of Mr. Onesiphore St. Amand, testamentary executor of the late Antoine Daspit St. Amand, or of any holder of sixty-six promissory notes drawn by said Francis Marion Ward, to the order of and endorsed by Ambrose Lanfear, and amounting together to the sum of thirty-four thousand dollars.

And Lucius C. Duncan, in his said capacity, declares that all the aforesaid notes having been paid with the exception of the twenty-two above mentioned, said mortgage is now reduce to the amount of said twenty notes, say for the sum of eleven thousand dollars, three hundred and sixty-three dollars and thirty-three cents, of which mortgage said William Polk, purchaser, does hereby by these presents take the reversion, to have and to hold the properties and appurtenances, slaves, &c., above described unto said purchaser, his heirs and assigns, to their proper use and behoof forever, and said Lucius C. Duncan, in his aforesaid capacity, does moreover subrogate the said purchaser to all the rights and actions of warranty which the estate of the late Francis Marion Ward has or may have against all preceding vendors of said properties and slaves, &c., hereby fully authorizing said purchaser to exercise said rights and actions according to law.

Thus done and passed at my office, in the Parish of St. Charles, aforesaid, on the day, month, and year first above written, in the presence of Messrs. Noel St. Martin and Cyprien H. Labranche, competent witnesses, who, together with the aforesaid, appears have signed to these presents with me, the aforesaid Recorder, after reading of the whole.

(Signed,) L. C. Duncan, dative executor of the estate of Francis Marion Ward, William Polk, N. St. Martin, C. H. Labranche, T. Chaix, Recorder.

A true copy.

Parish of St. Charles, October 10th, 1857.

(Signed) EMILE TASTET, *Recorder.*

[Rec. CLXXXV., D. T., 1860.]—3

No. 310.

AMBROSE LANFEAR vs. H. L. HUNLEY. } Document L. H. No. 5. (Introduced by plff.)

Filed October 7th, 1858.
7th August, 1848.

Sale of three undivided fourths part of a plantation, slaves, &c., by Wm. Polk to Ambrose Lanfear. } State of Louisiana, Parish of St. Charles.

Be it remembered that on this day, the 7th of the month of August, in the year of our Lord one thousand eight hundred and forty-eight, being the seventy-third year of the Independence of the United States of America,

Before me, François Chaix, Recorder, duly named, commissioned and sworn, in and for the Parish of St. Charles, State aforesaid, and in the presence of the witnesses hereinafter named and undersigned,

Personally came and appeared Mr. *William Polk*, residing in this Parish of St. Charles, who said and declared, that in consideration of the sum of fifty thousand dollars, which Mr. Ambrose Lanfear has paid cash to the succession of the late Francis Marion Ward, for the account of the appearer,

He, the said William Polk, does by these presents, sell, assign, transfer, convey, and set over, with the lawful warranties he has received from his vendor,

Unto said Ambrose Lanfear, a resident of the City of New Orleans, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the three undivided fourths part in the lands, stock, implements of husbandry hereinafter mentioned, viz.

1st. A certain tract of land established and cultivated as a sugar plantation, situated in this Parish of St. Charles, on the right bank of the Mississippi river, at about twenty-six miles from above the City of New Orleans, bounded on the upper side by land belonging to Honore Doussan, and on the lower side by the property of Mr. Pierre Kinler, said plantation measuring twelve arpents and twenty toises, more or less, front on the river by about eighty arpents in depth.

Also, together, the undivided three-fourths part in the crops now pending by the roots, and consisting of 230 arpents in canes, plant and ratoons.

Also, together, the three undivided fourths part in all the buildings and improvements existing on said plantation, and consisting mainly in sugar and draining houses, barns, stables, negro cabins, &c.

2d. A triple concession, situated in the rear of the plantation above described, and resulting from the public sale made at the City of New Orleans, on the 12th day of November, 1830, of the lands belonging to the government of the United States.

3d. A land called "Vacherie," situated in the rear, but now connected with the plantation first above described, at about nine miles from the river, and measuring about twenty-eight arpents front on the Bayou Crocodile, by a depth extending between lines almost parallel to the bayou called "Saut d'Ours."

4th. Twenty mules, seven horses, three wagons, nine carts, twelve double ploughs, one subsoil plough, five cross-cut saws, two cows with three calves, one buggy, three riding horses, one lot of axes, spades, hoes, &c., &c., &c.

5th. Another tract of land situated in the aforesaid Parish of St. Charles, above twenty-seven miles above the City of New Orleans, measuring three-fourths of an arpent, more or less, front on the river, by about eighty arpents in depth, bounded on its upper side by land belonging to Mr. Honore Doussan, and on its lower lines by the property of Mr. Telesphore Baudoin.

The above land and properties were acquired by Mr. William Polk, at the public sale made by the Sheriff of the Parish of St. Charles, on the 5th day of August, 1848, of the properties belonging to the estate of the late Francis Marion Ward, and in confirmation of said adjudication by the sale to him made of said properties by Mr. Lucius C. Duncan, dative executor of said late F. M. Ward, by acts executed before the Recorder undersigned, on the said fifth day of August, present month. According to a certificate which, in my capacity of Recorder of Mortgage for this parish, I do grant by these presents, there exist, at the date hereof, no mortgage whatever standing recorded in the name of Mr. William Polk, against the properties firstly, secondly, and thirdly described, with the exception of the conventional one resulting from the assumption that by the act above mentioned executed before the undersigned Recorder, on the 5th day of August, 1848, Mr. William Polk has taken of the mortgage, consented by said Francis Marion Ward, by act of the 27th December, 1845, before the undersigned Recorder, then Parish Judge and Notary Public for the Parish of St. Charles, in favor of Mr. Onesiphore St. Amand, testamentary executor of the late Antoine Daspit St. Amand, to secure the payment of twenty-two notes, dated the 27th October, 1845, subscribed by said Francis Marion Ward, to the order of and endorsed by Mr. Ambrose Lanfear, payable at three years of date, at the counting-house of said Ambrose Lanfear, in the City of New Orleans, countersigned "Ne Varietur" by F. Chaix, Judge and Notary for the Parish of St. Charles, and amounting together to the sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents ($11,363 33.)

And that there exist at the same date no mortgage whatever standing recorded in the name of said William Polk, against the property fifthly above described, with the exception of the conventional one resulting from the assumption which by act executed before the undersigned Recorder, on the fifth day of August, 1848, said William Polk has taken of the assumption by act executed before the undersigned Recorder on the 25th June, 1848, Mr. Lucius C. Duncan, dative executor of said late Francis Marion Ward, has taken of the mortgage consented by Pierre Mayronne in favor of Mr. Paul Maillard, by act executed before the aforesaid Recorder on the 16th day of March, 1848, to secure the payment of the sum of fifteen hundred dollars, amount of 3 promissory notes of the sum of five hundred dollars each, subscribed by said Pierre Mayronne to the order of Paul Maillard, and payable respectively at one and three years of date.

And the said William Polk further declared, that in consideration of the sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents, to be paid, as hereafter mentioned, by the said Ambrose Lanfear, in the lieu and place of him, the said William Polk.

The said William Polk does by these presents, grant, bargain, sell, assign, transfer, convey, and set over

Unto said Ambrose Lanfear, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof.

The present sale is made and accepted for and in consideration of the aforesaid sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents, payable as follows, to wit: the said Ambrose Lanfear promises and binds himself to pay in lieu and place of said William Polk, the twenty-two notes hereinafter mentioned, which by the aforesaid act of the fifth day of August, 1848, before the undersigned Recorder, the said William Polk has promised and obligated himself to pay in the discharge of the estate of said late Francis M. Ward, to wit: twenty-two promissory notes bearing date the 27th day of October, 1845, subscribed by said late Francis Marion Ward, (to wit: twenty-two promissory notes bearing date the 27th October, 1845, subscribed by said F. M. Ward,) to the order of and endorsed by Mr. Ambrose Lanfear, payable at the counting house of said A. Lanfear, in the City of New Orleans, at three years of date, amounting together to the aforesaid sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents, countersigned "Ne Varietur," by F. Chaix, Parish Judge and Notary Public for the Parish of St. Charles, and secured by privilege and mortgage on the landed properties above described in paragraphs No. 1, 2, and 3, and to secure the payment of the above described notes at their falling due, the said Ambrose Lanfear does hereby assume the reversion

which by the aforesaid act of the fifth day of August, 1848, before the undersigned Recorder, the said William Polk has taken of the mortgage consented by the said late Francis Marion Ward, in favor of said Onesiphore St. Amand, by the act aforesaid, of the 27th December, 1845, before the undersigned Recorder, then Parish Judge and Notary for the Parish of St. Charles.

It is well understood and agreed upon between the parties, that the said William Polk, vendor, shall have the right to cancel and annul the sale, the three undivided fourth part of the above slaves, as mentioned, by refunding to the said Ambrose Lanfear the amount of the twenty notes afore described, say the sum of eleven thousand three hundred and sixty-three dollars and thirty-three cents, on or before the sixth day of December next, 1848, with interest thereon at the rate of eight per cent. per annum from the 27th day of October, 1848.

According to a certificate which, in my capacity of Recorder of Mortgage for this parish, I do grant by these presents, there exist at the date hereof no mortgage whatever standing recorded in the name of Mr. William Polk on the slaves above mentioned.

To have and to hold the three undivided fourths part of the properties and slaves, &c., above described, unto said purchaser, his heirs and assigns, to their proper use and behoof forever, and, said William Polk does moreover subrogate the said purchaser to all rights and actions of warranty which he has or may have against all preceding vendors of said properties and slaves, hereby fully authorizing said purchaser to exercise said rights and actions according to law.

Thus done and passed in my office, at the Parish of St. Charles aforesaid, on the day, month, and year first above written, in the presence of Messrs. Cyprien H. Labranche and Noel St. Martin, competent witnesses, who, together with the aforesaid appearers, have signed to these presents with me, said Recorder, after due reading of the whole.

(Signed,) AMB'SE LANFEAR,
WM. POLK,
N. ST. MARTIN,
C. H. LABRANCHE,
F. CHAIX, *Recorder.*

A true transcription from the original, Parish of St. Charles, the 14th day of August, 1848.

(Signed,) F. CHAIX, *Recorder.*

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.
} Document L. H. No. 6. (Introduced by plff.)

Map of Townships 13 and 14
Hereto annexed by consent of parties.

AMBROSE LANFEAR
vs.
H. L. HUNLEY.
No. 310.
12 December, 1854.

Document L. H.
No. 7.
(Introduced by plff.)

Sale of interest in plantation and slaves,
William Polk to
Ambrose Lanfear.
Filed October 7th, 1858.

Be it known, that on this twelve day of December, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the United States the seventy-ninth.

Before me, Theodore Guyola, Notary Public, duly commissioned and sworn for the Parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned,

Personally came and appeared William Polk, of the Parish of St. Charles, in this State, who declared, that for the consideration hereinafter expressed, he does by these presents, grant, bargain, sell, convey, transfer, and assign, and set over

Unto Ambrose Lanfear, of this city, here present, accepting and purchasing for himself, his heirs and assigns, all and singular, the one undivided fourth part of the following described property, slaves, &c., to wit:

1. A certain tract of land, established and cultivated as a sugar plantation, and known by the name of "Ashton plantation," situated in the Parish of St. Charles, in this State, on the right bank of the river Mississippi, at about twenty-six miles the City of New Orleans, and measuring twelve arpents and twenty toises, more or less, front on the said river, by about eighty arpents in depth, bounded on the upper side by lands now or lately belonging to C. Honoré Doussan, and on the lower side by lands now or lately belonging to Pierre Kinler.

2. The triple concession situated in the rear and connected with the said plantation, and resulting from the public sale of the United States lands, made in the City of New Orleans on the twelfth day of November, eighteen hundred and thirty.

3. A tract of land called "Vacherie," situated in the rear of said plantation, at about nine miles from the river, and measuring twenty-eight arpents front on Bayou Crocodile, by a depth extending between almost parallel side lines to the bayou called "Saut d'Ours."

4. Another tract of land situated in said Parish of St. Charles, on the right bank of the Mississippi river, at about twenty-seven miles from above the City of New Orleans, and measuring three-fourths of an arpent, more or less, front on said river by about eighty arpents in depth, bounded on the upper side by lands now or lately

belonging to Honoré Doussan, and on the lower side by the property of Telesphore Baudoin.

All the above described lands, together with the twenty-five slaves thereinafter described, were purchased by said William Polk from the estate of the late Francis Marion Ward, deceased, by two acts passed before François Chaix, Recorder of the Parish of St. Charles, on the fifth day of August, 1848, and by another act before the said Chaix, on the seventh day of same month, and year, the said Polk sold and conveyed to the said Lanfear three undivided fourths part of the said lands and slaves.

5. A certain tract of land situated in the said Parish of St. Charles, on the right bank of the river Mississippi, and measuring one-half of an arpent front on said river by eighty arpents in depth, bounded on the upper side by the property of Telesphore Baudoin, and on the lower side by the property of said Lanfear and Polk, which said tract of land was purchased by the said Lanfear for three-fourths, of the said Polk for one-fourth from Chevalier Honoré Doussan, by act passed in this office on the twentieth day of May, eighteen hundred and fifty-three.

6. Two tracts of land situated in the said Parish of St. Charles, and lying back from the river, designated on the plans of the United States officers as sections Nos. eighty-two and eighty-three, in townships thirteenth, south of range twenty, east, purchased by said Lanfear, in his individual name, from James Flood, by an act passed by William Christy, a Notary in this city, on the seventeenth day of April, eighteen hundred and forty-nine.

7. The north-west and south-west quarters of the south-west quarter of section No. one hundred and four, in township thirteen, south of range twenty, east, containing together eighty acres, and the north-west quarter of the same section, township and range, containing one hundred and thirty-four acres and eighty one hundredths of an acre, purchased by the said Lanfear from the United States, as per patents issues in his name.

The lands sixthly and seventhly described were purchased by the said Lanfear, for the use and benefit of the usual co-partnership between him and the said Polk, in which the latter's interest was one-fourth as to the said lands, and the price thereof has been so charged in their books of account.

8th. All and singular the buildings, improvement, engines, machinery, mules, horses, cattle, wagons, carts, farming utensils, implements of husbandry, and other effects on the above described lands, and all the crops of every kind and nature thereon.

9th. The following described slaves for life, now on and attached to said plantation, to wit:

Slaves purchased from the estate of Ward:—KITT, Lawrence, Gilbert, Peter, Jackson, Daniel, Willis, Bob Hill, Sam, Campbell, Jacob, Carter, Albert, Harrison, Jerry, Joseph, James, Wilford,

Jefferson, John, Trench, Griffin, Isaac, Strother, Wharton, and Charles.

Slaves introduced by said Polk, and their increase:

MEN.

Nelson, driver; Abraham, Johnson, Little Allick, Little Charles, Washington, Bank, Old Charles, Little Jess, Sandy, Old Jess, Godfrey, Charles, Gounnen Peter, Jarrett, Little Bob, York, Flint, Eli, Little Jeff, Dick, Allick, (old.)

WOMEN.

Annah, Mary and two children, Martha and five children, Judy and two children, Caroline and two children, Fanny and six children, Julia and four children, Elsey and four children, Charlotte, Dianna, Washington, Julia and three children, Molly and one child, Judy, Fornet and three children, Sally and one child, Caroline, Diana Carter, Diana Charles and one child, Ann, Penny and three children, Jemmy and two children, Nelly and four children, Harriet and one child, Charlotte, Hamearyths, Amoretta, Beckley and one child, Philis and one child, Maria, Rachel, Delia, Maria, Old Philis, Old Judy, Emeline, Lydia, Peggy, Anna, Rachel.

Boys.—Little Abey, Wiley, Little Henry, Cesar, London, Ham, Peyton, and Cyrus.

Three undivided fourths parts of the slaves introduced by said William Polk were conveyed by him to the said Lanfear, by act passed before the said F. Chaix, Recorder, on the 7th day of August, 1848, and reserved in said act the right to cancel said sale on certain conditions therein set-forth; which act he surrendered by act, under private signature, on the fourteenth of the same month of August, duly registered in the office of the said Recorder on the twentieth day of May, eighteen hundred and fifty-one.

To have and to hold the said undivided one-fourth part of the said plantation, lands, slaves, &c., unto the said purchaser, his heirs and assigns forever, it being well understood and agreed by the said parties, that the interest of the said vendor, in the said party, slaves, &c., is conveyed without any warranty whatever, with the exception of the slaves introduced by him, and more particularly that the said vendor does not give any warranty against a suit now pending. But he cedes and transfers unto said purchaser all the rights and actions of warranty to which he himself is or may be entitled against all former owners of the said property and slaves, subrogating the said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of forty-five thousand dollars ($45,000 00,) for which the said Lanfear has given his four promissory notes, drawn to the order of and endorsed by himself, dated this day, and made pay-

able as follows, to wit: One, for the sum of ten thousand dollars, on the first of January next; and three, for the sum of eleven thousand six hundred and sixty-six dollars and sixty-six and two-thirds cents each ($11,666 66⅔,) on the first day of March, respectively in the years 1856, 1857, and 1858, all bearing interest after maturity, if not then punctually paid, at the rate of eight per cent. per annum from their maturity until final payment, but the said Lanfear to have the right of postponing the payment of the last note for one year, on paying or adding interest thereto at the rate of six per cent. per annum, for the term of prolongation.

Which said notes, after having been paraphed by me, Notary, to identify them herewith, were delivered unto the said vendor, who hereby acknowledges the receipt thereof.

And in order to secure the punctual payment of the said notes and interest, the said purchaser hereby specially mortgages and hypothecates the said undivided fourth-part of the said property, slaves, &c., in favor of his said vendor, with promise not to sell, alienate, or encumber the same, to the prejudice of this act.

And it is hereby understood and agreed by between the said parties, that this conveyance cancels any and all agreements now existing between them, and in relation to the above described property, and particularly one executed and entered into on the eighth day of March last past, each party being hereby relieved and discharged from the obligations therein contained; and, further, that in case the said Lanfear shall hereafter desire to sell the driver Nelson and his wife, the said Polk shall have the preference, at the price fixed on them.

The said Lanfear hereby dispenses with the production of a certificate of the Recorder of Mortgages for the Parish of St. Charles, to show the mortgages, if any, on the said plantation, slaves, &c., and to be annexed to this act, as required by Article 3,328 of the Civil Code of this State.

And now to these presents personally came and appeared M^me^ Alice C. Flower, of lawful age, wife of said William Polk, who after having taken cognizance of the foregoing act, which I, the said Notary, carefully read and explained to her, declared and said that she approves and ratifies the same, and further that it is her wish and intention to release in favor of the said purchaser the interest herein conveyed from the matrimonial, dotal, paraphernal, and other rights; and from any claims, mortgages, and privileges to which she is, or may be entitled, whether by virtue of her marriage with her said husband or otherwise.

Whereupon I, the said Notary, did inform the said Mrs. Polk, apart and out of the presence and hearing of her said husband, that she had by law a legal mortgage on the property of her said husband: first, for the restitution of her dowry, and for the reinvestment of her dotal property sold by her said husband, and

which she brought in marriage: 2dly, for the restitution and reinvestment of the dotal property by her acquired since marriage, whether by succession or donation, from the day the succession was opened, or the donation perfected. Thirdly, for nuptial presents. Fourthly, for debts by contracted with her said husband; and fifthly, for the amount of her paraphernal property alienated by her and received by her said husband, or otherwise disposed of for the individual interest of her said husband. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights or reclamation against the property herein conveyed, whether under mortgage, privilege, or otherwise.

And the said Mrs. Polk did thereupon declare unto me, Notary, that she was fully aware of and acquainted with the nature and extent of the matrimonial, dotal, paraphernal, and other rights and privilege thus secured to her by law on the property of her said husband, and that she nevertheless did persist in her intention of renouncing, not only to all the rights, claims, and privilege hereinbefore enumerated and described, but all others, of any nature or kind whatever to which she is or may be entitled by any laws now heretofore in force in the State of Louisiana.

And the said Wm. Polk, being now present, aiding and authorizing the said Mrs. Polk in the execution of these presents, she, the said Mrs. Polk, did again declare that she did and does hereby make a formal renunciation and relinquishment of all her said matrimonial, dotal, paraphernal, and other rights, claims, and privileges, in favor of said purchaser, binding herself, her heirs, at all times, to sustain and acknowledge the validity of this renunciation.

Done and passed at New Orleans, in my office, the day, month, and year aforesaid, in the presence of William G. Latham and Paul Abat, witnesses, who have signed with the appearers and me, Notary, after reading the whole.

(Signed,) WM. POLK,
ALICE POLK,
AMB'SE LANFEAR,
W. G. LATHAM,
P. ABAT,
THEO. GUYOL, *Not. Pub.*

A true copy.

(Signed,) THEO. GUYOL, *Not. Pub.*

A true extract from the conveyances, Book B, f. 3, and following. St. Charles, 7th October, 1858.

(Signed,) E. TASTET, *Recorder.*

AMBROSE LANFEAR
vs.
H. L. HUNLEY.
No. 310.

Testimony of Dorvins, as taken in the case No. 195, Lanfear *vs.* N. O. O. & G. W. R. R. Co., & Long.

No. 8. Filed 7 October, 1858.

Andre Dorvins, witness for defendants, being duly sworn, says and deposes, has resided about seventy years in the Parish of St. Charles.

Cross-examined.—Witness is seventy years of age; is born in the Parish of St. Charles; recollects the time Louisiana belonged to Spain; the communication with the city fifty or sixty years ago were very difficult, and could only be had by traveling on horseback or in pirogues; the country was not thickly settled as now; each one guessed the distance the best he could, and there was nothing fixed; the communication between the River and Bayou des Allemands was either by foot traveling or by skiff, either going round or through the swamps; no one could ascertain the distance from Bayou des Allemands.

Testimony of Andre Dorvins in case of Louis Ranson and others vs. J. Long and others.

Filed 7th October, 1858.

Andre Dorvins, Sr., duly sworn, says, he knows how many children Paul Toups left; they were Frederick Toups, Marie Louise Toups, who married with George Toups, and Mariette Toups, who married with Frederick Mathis; Paul Toups had no other heirs.

A. Dorvin, sworn, says: he has known the late Pierre Domé; knew him in 1817; he was then residing on the vacherie, fronting on Bayou des Allemands, known as Toups and St. Amand's Vacherie, down to Bayou Sunt d'Ours; believes he died there since then; he, witness, has known Messrs. Ranson Brothers in possession of that vacherie up to their death, since the death of Domé to the time of their own death Ranson frerès had in their possession; that was certainly more than ten years; and since the death of Ranson Brothers, it continued to be in the possession of their heirs.

Mr. Louis Ranson is the sole heir of Mr. Norbert Ranson, Louise Ranson, wife of E. Tossier, Clelie Ranson, wife of Jules Labatut, Zenon Ranson, Jr., and the late Mrs. Wemberg, were the heirs of the late Zenon Ranson. Witness always known the Vacherie Domé in the possession of Domé, the successors he has named without interruption.

Cross-examined.

Witness is a native of this parish, and is seventy years of age.

Witness being shown the map marked A., herein filed, says:

That the house in which Domé lived were situated on that portion of Bayou des Allemands marked 42 on said map, and within the prolongation of side line of Toups' grant, or the grant so called, and marked on said map; but the vacherie extended back to Bayou Saut d'Ours. His cattle were roving from Bayou des Allemands to Bayou Saut d'Ours. Witness always known the said land to were used as claimed by the said Domé; that they were cutting wood, grazing their cattle on it; that no one interfered with him and he, and the Ranson claimed it openly as their property, and that he, witness, is not aware that they had cut any wood between the Bayou des Cannes and Bayou Saut d'Ours; but no one was hardly living there at the time. There were no roads or opening to the river, and the whole was a marshy district, where wood could not have been used for trade. Domé, his wife, and one or two children were residing there, and visited occasionally by hunters. Messrs. Ranson had always some persons residing on the vacherie; for a long time it was Mr. Celestin Matern who was raising a great deal of cattle, and raising crops near his house.

The residence alluded to is not between Bayou Saut d'Ours and Bayou des Cannes, but on Bayou des Allemands.

No. 310.	Document.
Ambrose Lanfear	L. H. No. 9.
vs.	
H. L. Hunley.	Introduced by pl'ff.

Filed December 7th, 1858.

1805, Juillet 13, Etat de la Louisiane.

Vente de Terre par	Paroisse St. Charles,
Frederick Toups	Comté des Allemands.
à	Extrait des Regestres du Greffe de
Ant^{e}. St. Amant.	la Paroisse St. Charles.

Parderant nous Achille Trouard, Juge de la Cour et Commandant Civil du Comté des Allemands, y résidant, feit presents en personne les Siems Frederick Toups, lequel en presence des Siems Louis Maillard et Gaspard Emilién, témoins Soussigné's et présents, nous a déclaré avoir vendu, cédé, quitté, transporté et delaissé, dès ce moment et pour ton Jours avec garantie pour lui rendeur de dettes et d'hypothéques et de tous autres empechements engagements genéralement quelconques, une terre et habitation de Deux arpens de face sur la profondear ordinaire, situeès en ce dit comté sur la rive droite du fleuve, a environ huit lienes de la Capitale attenant par en haut à l'habitation de Henry Jean et par en bas a celle du Sieur St. Amand; laquelle dite terre et habitation telle quelle est désignee et se comporte avec ses Batisses, edificés, barriéres, circonstances et dependances sans ancune reserves, au Sieur Antoine Daspit St. Armand, aussi; habitant du meme lieu

ici present, acquereur acceptant pour lui, ses hoirs et ayant cause la susdite terre et habitation qu' il declare connaitre pour l'avoir vue et visiteé et en etu en possession depuis environ deux mois, pour pin et somme de douze cent piastres gomdes Sonnautes; dans trois cent vingt piastres qui ent été payeés comptant aux mains du dit vendeur et desquelles il donne ici reçu et decharge en forme et les huit cent soánnte et quinze piastres restantes pour sold et entier payment payables dans le courant de Ferrier de l'année Mil huit cent sic au moyen de quos le susdit Sieur vendeur, abandonne, se dessaisit et totalement se desempare de tont droit de proopriété et actions qu'il avait sur la dite terre et habitation, pour les transporter au sus dit Sieur acquereur qui, ici présent, les accepte, pour en Jouir des ce moment et pour tonjours comme d'un bien à lui appartemant en propre et duquel il pent disposer à sa volenté.—car aiñsi sout convenus. Fait et passé ce treize Juillet de l'au de N. S. Mil huit cent cing et le vingt nuivieme de l'Independance de la Republique de l'Amérique, en présence des parties contractantes et des témoins lesquels apies lecture faite, y out signé chacun pour ce que le concerne et nous Commandant qui donnons foi.

Frederick Toups, Ant^e^ Daspit St. Armand, Roubieu, Louis Maillard, et Achille Trouard.

Nous Marie, Louis Florent Basile, Juge de la Paroisse St. Charles, au Comté des Allemands, certifious que la presente copie est cons forme à l'acte original, déposé en ce Greffe; en foi de quoi nous avons delevié le present certificat et y avons apposé le scean de la Paroisse.

Paroisse St. Charles, le 5 Janvier, 1814.

(Signé) F^ent^ BASILE,
Juge.

No. 310.

AMBROSE LANFEAR *vs.* H. L. HUNLEY. } Document L. H. No. 10. (Introduced by pl'ff.)

Filed December 7th, 1858.

20 Novembre, 1789. Vente de terres par Succession Jacques Rixner à Paul Toups.

Au Jourd 'huy le vingt du mois de Novembre, de l'anneé Mil sept cent quatre vingt neuf, à neuf heures du matin est comparu en personne pardevant nous Jacques Masicot, Capitaine de milice, Juge et commandant de la Paroisse St. Charles, des allemands, y résidant Monsieur Janlouis Rixner, Executeur testamentaire des biens de feu Jacques Rixner son fierè décédé dans la dite paroisse, lequelle nous a déclaré et confessé en présence de Messrs. André Wackeway et Louis Boutellié Eugène Fortier temoins sous signés, avoir vendu,

cédé quitté transporté et delaissé des maintenant et à tonjours; en pleine propriété et jouissance, garanty de toute depte et hypothèque, evictions supstitution généralement quelconques, une terre et habitation apartenante à la succession de feu Jacques Rixner contenante neuf arpend de faces sur quatre vingt de profondeur conformément au titre, situé à environ sept lieux de la ville, attenante par en haut à la terre de nous soussigne, Commandant, et par en bas à celle de la dite succession, sur la rive gauche du fleuve en montant, avecq toutes les Batisses qui sent dessies et clotures ainsy que quatre pere de cure et leurs mouvement tell qu'elle se comporte et conformement aux détaille dans l'inventaire le dit sieur curateur se reservant cent sippre a prendre dans la cippriére pour l'outretion et usage de la terre reservé pour la fille du defunt. La dite cession ainsy faite pour prix et somme de cinq mille piastres en argent courand, vendue au sieur Paul Toups, acquéreur, cy present et acceptant pour lui, ses hoire oue ayan cause, savoir mille piastres payable dans tout le courand du mois de Décembre de l'année mil sept cent quatre vingt dix, Deux mille piastres payable dans tout le courand du mois de Decembre de l'anneé mil sept cent quatre vingt ouze, et deux mille piastres restante pour parfait et entier payment dans tout le courand du mois de Decembre de l'année mil sept quatre vingt douze; Le dit acquereur se trourant content et satisfait pour l' a voire vue et examiné et en a pris possession en passant le sus dit acte, pour en jouir comme d'em bien à luyen propre; la dite terre et habitation restera hypothéqué il ne pourra aitre vendu qu 'au parfait payement telle sent convenu les party contractantes promettant, &c., obligent, &c., renoncant, &c.

Fait et passé en notre maison de commandemant le sus dit jour mois et au que s'y dessers, les party contractantes et les temoins ont signé la présente minutte et nous soussignés après lecture faite.

(Signé) JN. LOUIS RIXNER,
" PAUL TOUPS,
" E'NE FORTIER,
" ANDRÉ WACKERMIE,
" LOUIS BOUTEILLIER,
" JACQUES MASECOT.

Pour copie conforme à l'original déposé, pour recoins, en mon office.

Paroisse St. Charles, 7 Octobre, 1857.

(Signed) EMILE TASTET,
Recorder.

No. 310. AMBROSE LANFEAR, *vs.* H. L. HUNLEY.	Document L. H. No. 11. Introduced by Plaintiff.

Filed October 7th, 1858.

Printed Report of Mr. Benjamin to the Senate of the United States.

Hereto annexed by consent of parties.

No. 310. AMBROSE LANFEAR, *vs.* H. L. HUNLEY.	Document L. H. No. 12. Introduced by Plaintiff.

Printed Memorial of Ambrose Lanfear.

Filed October 7th, 1858.

Hereto annexed by consent of parties.

No. 310. AMBROSE LANFEAR, *vs.* H. L. HUNLEY.	Document L. H. No. 13. (Introduced by Plaintiff.)

Filed October 7th, 1858.

Bond of A. Lanfear and William Polk.

Know all men, by these presents, that we, Ambrose Lanfear and William Polk, as principals, and Louis Ranson, as security, of the Parish of St. Charles and State of Louisiana, are held and firmly bound unto the N. O., Opelousas, and G. W. R. R. Co., and John G. Long and others, in the sum of eight thousand dollars lawful money of the United States of America, to be paid to the said Company and John G. Long and others, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the twenty-second day of June, in the year of our Lord, 1854.

Whereas, A. Lanfear and William Polk have this day applied to the Honorable the 3d Judicial District Court, praying for a writ of Injunction and Sequestration,

Now the condition of the above obligation is, that we, the above-bound Lanfear & Polk, and Louis Ranson, will well and truly pay, to the said parties above named, the defendants in said injunction and sequestration, all such damages as they may recover against us, in case it should be decided that the injunction and sequestration were wrongfully obtained.

(Signed) AMBSE. LANFEAR, [L. S.]
" WILLM. POLK,
" LOUIS RANSON, by Ambse. Lanfear.
" WM. POLK. [L. S.]

Signed, sealed, and delivered in the presence of

(Signed) H. ST. PAUL,
EMILE TASTET.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Document L. H.
No. 14.
(Introduced by plaintiff.)

Original Petition in Suit No. 195.
Filed October 7th, 1858.

AMBROSE LANFEAR & WILLIAM POLK
vs.
N. O., OPELOUSAS & GREAT W. R. & JOHN G. LONG & OTHERS.

To the Honorable the Judge of the Third Judicial District Court in and for the Parish of St. Charles.

The petition of Ambrose Lanfear, of New Orleans, and of William Polk, of St. Charles, respectfully showing,

That they are the owners, through sundry conveyances, of the following property, to wit: a portion of a certain lot of land situate in the parish of St. Charles, formerly county of Acadia, at the place called "Les Coteaux de France," at a distance of about three and a half leagues from the western bank of the Mississippi, containing eighteen arpents in front, and a depth of two leagues and a half; the whole of which tract stands confirmed under No. 74 of the Commissioners' report. (See American State Papers, Vol. 2, page 324.)

That the portion of said land belonging to petitioners extends nine arpents front on each side of a certain bayou named "Bayou Crocodile," and commencing at a certain shell mount situated at the junction of said Bayou Crocodile and Bayou "Saut de l'ours," and running up to the base line of Townsip 13, west of the dividing line of R. XX. and XXI., and such as the same appears on the hereto annexed plan of A. S. Philips, as the ridge marked Coteaux de France, between mile posts 24 and 29, and forming a superficial

area of about two thousand five hundred and twenty arpents. (See also Pothier's plan, annexed for reference.)

Now, petitioners represent that the lands thus by them jointly owned is highly valuable, being heavily timbered and elevated; that the timber thereon is to them, as sugar planters and owners of the front tract to the depth of eighty arpents or more, an article of great importance.

Petitioners further represent that by the confirmation of that land by Congress to the heirs of Paul Toups, the same is no longer subject to private entry, pre-emption, or any other rights, either from squatters, settlers, or purchasers, yet petitioners now aver that certain individuals, to your petitioners unknown, (except one whose name is John G. Long,) but the others' names will hereafter be given to the Court, have, without any color of right or title, undertaken to trespass upon your petitioners' land, and then and there settled, squatted, committing waste, felling trees, cutting wood, building cabins, and otherwise injuring your petitioners' property to a very great extent and to the amount of ten thousand dollars and upwards.

Now petitioners represent that the said individuals have cut some six hundred cords of wood each, for the value of five dollars, and are now preparing to remove the same from your petitioners' land, by way of the New Orleans, Opelousas and Great Western R. R., whose tract is already laid down and runs through the said land, and that unless restricted, they will help and assist in removing said wood and timber beyond the reach of petitioners and of this Hon. Court.

Wherefore, your petitioners pray that, considering these premises, it may please the Honorable Court to issue the following writs of injunction and sequestration, directed as follows, to wit:

1o. A writ of injunction to the New Orleans, Opelousas and Great Western R. R., forbidding said Company, under penalty of all damages, to transport any wood, timber, or lumber, cut or found upon the ridge known as "Les Coteaux de France," between mile posts 24 and 29 of their road.

To John G. Long, now a temporary resident of the parish, and a trespasser on the land, enjoining him from committing any further waste, and from even residing on the land of your petitioners.

And, finally, a writ of sequestration directed to the Sheriff of the Parish of St. Charles, ordering him to take into his possession all the timber already cut, as well as the whole and every parcel of land described in the foregoing petition, to remove from the same all cabins, houses, and shantees whatever not erected by these petitioners, and turn out therefrom any settler, squatter, trespasser, or intruder whatever, with prohibition to all and every one of them to waste or reside any longer on the land aforesaid.

And that after due proceedings had, said John G. Long and his associates, trespassers, be condemned to pay, in solido, to your petitioners the sum of ten thousand dollars, with interest and costs; that they be forever enjoined from entering your petitioners' land and committing waste thereon, and that finally your petitioners be quieted in their possession.

And petitioners praying for equitable relief,

Will, as in duty bound, etc.

(Signed) ST. PAUL & BONNY,
of Counsel.

Affidavit of A. Lanfear.

A. Lanfear, being duly sworn, says: That the facts stated in the foregoing petition are true and correct, and that, according to his belief, they render an injunction necessary; and he does further say that he has good ground to apprehend that the defendant, John G. Long, and his associates, make use of their possession to dilapidate and waste the fruits and revenues of the property he claims, and that convert the same to their own use.

So help him God!

(Signed,) AMBROSE LANFEAR.

Sworn to and subscribed before this 21st day of June, 1854

(Signed,) R. F. VUGENT, *Dep'y Clerk.*

Petition filed 22d June, 1854.

(Signed,) C. ST. MARTIN, *Clerk.*

Order. Let the writs of sequestration and injunction within prayed for, issue as within prayed for, on plaintiffs giving bond, with good and solvent surety, in the sum of eight thousand dollars.

New Orleans, June 21st, 1854.

(Signed,) D'AUGUSTIN,
Judge, acting in the absence of Judge V. Burthe.

Evidence for Defendant.

Filed October, 1858.

No. 310. Document L. H.,
AMBROSE LANFEAR No. 1.
vs.
H. L. HUNLEY. Introduced by Def't

Transcript from Lands' Office of Claim.
Filed October 7th, 1858.

Moi Soussigné, à la requisition de Mr. Antoine Daspit St. Amand, je déclare avoir été requis de lus farie un plan conforme à une terre qu'il posside dans la profondeur de ses terres située au lien appele *Coteau de France*, a environ trois lienes du fleuve Mississippi, dans la profondeur et a environ ouze lienes de la Nouvelle Orleans. Laquelle tene il nous avoir en de Mr. Paul Toups et

elle avait deux lieux et dem de profondeur, sur environ 18 a 27 rpens en divers endroits et qu'il en fournirait les titles envers qui de droit.

Pour ce accompagné dure que rant. J'as été reconnaitré le Bayou Crocodile duquel il est borné pour la face, et ayant examiné le local, J'ai en que sans la partie moyeune latene pouvait avoir 18 arpens de faire au Bayou et que dans la profondeur au dessus du Bayou trois Fourches elle pouvaitavoir vingt sept arpens.

Alors au point A J'ai ouvert liziére par sud vingt neuf degrés ouest pour la profondeur 207 arpens jusqu'au point G ouvrant la face pour le rectangle, J'ai mesuré vingt huit arpents ou J'ai posé la borne B de la ouvrant la parallelle J'ai continué la parallele jusqu'au Bayou des Cannes D situé à 209 arpents servant de limite au réquérant de sorte qu'il se trouve limité par les prairies basses et tremblantes, le Bayou des Cannes et Crocodile et a une superficie de 5824 arpens, et en terre ferme environ 2744 arpens comme il est demarqué au plan.

Fait 21 cldo 9, 8re, 1807.

Pour copie conforme a longenal.

(Signed,) F. V. POTHIER, *Arp'r Jure.*

[Here follows Plate. See original page 79.]

A Monsieur le Baron de Carondelet, Brigadier des Armées de sa Majesté, Gouverneur General de la Province de la Louisiane, &c., &c., &c.

Supplié trés humblement.

Paul Toups, habitant a la cote des Allemands, Paroisse St. Charles.

Expose à votre autorité, Monseigneur qu' ayant depuis trois anneés consecutives essuyé des pertes considerables par le manque de récolletes et mortalités d'esclaves, se trouvant par ces accidans imprevus obéré par les deples, désirant y facie honneur il serait contraint de mettre en vente son habitation qu'elle est la seule ressource pour la subsistance de sa famille, a ces causes le suppliant aurait recoursà votre clemence, Monseigneur pour qu'il vous plaise daigner lui conceder a titre de propriété, une terre appartenant au domaine de sa majesté (que Dieu garde) pour la dite terre farie valoir, et y établir une Vacherie, laquelle, située à léndróit nommé les coteaux de France, distante d'environ ouze lienes decette capitale et environ trois lieres et demie du fleuve sur l'autre Rive, arrivant à un Bayou nommé Crocodile, lequel allant parallelé avec le fleuve, à prendre la dite terre, depuis la traverse du sus dit Bayou. Jusque à un grand marais gissant derriére le Bayou aux Cannes, ce qui forme une langue de terre d'environ seize ou dix huit arpens dans sa largeur moyenne sur une profondeur d'environ deux lienes et dernie borné d'une cote par des prairies tremblante et de l'autre par des lacs, entrecoupes de joncheres.

Grace que le suppliant espere de votre autorité Monseigneur, his ne cessera d'adresser Journellement des oveux au ciel pour la conservation de vos Jours. A la Nouvelle Orleans, le 21 Nov. Mil sept cent quatre vingt quinne.

(Signed,) PAUL TOUPS.

NUEVO ORLEANS, 12 *de Marso de* 1796.

El Agumensor General de esta provincia, a el particular numbra do par este esta bluera esta parte sobre la lengua de tierra de diez y ocho apares en su ancho medio, y sobre la profondedad de dos leguas y media, siempra que como expresa, les tierras que lindansean prados moredizas o pantanos y no causando perjencio alguno, baxa enyo supuesto le estanderan á continuacion las diligencias deapeo, que me remitira, para proveer a continuacion las diligencias de apeo, que me remitira para proveer la interesado del correspondiente titulo en forma.

(Signed,) EL BARON DE CARONDELET.

Au. Jourd hui dix Sept. du mois de Novembre de l'anneé de notre Seigneur 1807 et la trente deuxiéme de l'Independance Americaine.

Pardevant nous, Pierre Bauchet St. Martin, Capitaine de Milice et Jude de la Par'se St. Charles comté de la cote des Allemands et en presence des sieurs Ch's Perret et Ch's Aimé Daringbourg, nos temoins soussigne's ont comparu les sieurs Frederick Toups, George Toups, and Frederic Mathis tous trois hiritiers de feu Paul Toups, demeurant dans cette Paroisse et tous majeurs lesquelle vendent, cedent et transportent au Sieur Ante Daspit St. Amand ici present et stipulant pour lui ses hoirs et ayant cause une terre franche de dette et d'hypotheques, située dans cette paroisse, et sur la rive droite du fleuve de la contenance d'environ seize à dix huit arpens dans sa lar geur moyenne sur une longueur d'environ deux lienet et demié, bornee d'um coté pardes prairies tremblante et de l'autre par des lacs entrecoupés, la dite terre nommee les Coteaux de France, distants dela Capital d'environ ouze lienes laquelle leur avait été concédé pear le Baron de Carondelet, Gouverneur de cette province en l'année Mille sept cent quatre vingt quinze la mime que le dit Paul Toups a etablie en vacherié, dont l'acquereur nous a dit avoir au plenit et parfaite connaissance laquelle vente est faite pour le prix et moyennant la somme de six cent piasters, troiscent piastres ont été payés a la oue de nons comptans, en especes bonne sonnantes et ayant coms valeur reelle, dont les vendeurs content satisfait, quittant l'acheteur, et les trois cent piastres payable a la rente des sucre de sa recolte de l'année prochaine, Mil huit cent huit voulant les vendems que le Sieur Ante. Daspit St. Amand, Jouisse paisiblement de la dite propriété comme d'unm bien a liu appartenant et se disistant en sa faveur de tons les titres, droits et actions qu'els

ent sar la dite terre de propriété telle qu'elle se comporte dans moment promet taut les vendeurs de faire Jouir paisiblement cheteur renon çant à toutes reserves et exception et s'obligeant de a garantir de tous empechments trouble et eviction, le mois Jour et an que dessus et ont signés avec nous les vendeurs à l'exception de Sieur Frederic Mathis qui nons a déclaré ne savoir ecrire dont nons Juge donnous fot Frederic Toups, George Toups, Ch's Perret, Ch's Aime Danrisbourge, Ante Daspit St. Amand. P^re^ B^chet^ St. Martin.

Conforme a l'original déposé dans le greffe de cette jurisdiction ce 21 Novembre Mil huit cent Sept.

(Signed,) P^RE^ B^CHET^ ST. MARTIN.

[PARISH SEAL.]

Land Office,

New Orleans, October 5th, 1857.

I hereby certify that the foregoing is a true and exact copy of the notice of claim No. 529 in favor of Daspit St. Amand, plan, and accompanying notes of survey by F. V. Pothier, sworn surveyor, also the original application of Paul Toups, order of survey and conveyance, from the record of this office.

In faith whereof, I have hereunto subscribed my name on the day and year above written.

(Signed) LOUIS PALMS, *Register.*

EASTERN DISTRICT OF LOUISIANA,

United District Court, City of New Orleans.

I, A. R. Jennings, clerk of said Court, hereby certify that Louis Palms, Esq., by whom the foregoing transcript is certified, was at the time of signing said certificate and is now the Register of the Land Office (of the U. S.) for the South-Eastern District of Louisiana, and that the signature to said certificate is, as acknowledged by him before me, his true and genuine signature.

In testimony whereof, I hereby set my hand and affix the seal of said Court, at New Orleans, this eighth day of [SEAL.] December, A. D. 1857, and 82d year of American Independence.

(Signed) A. R. JENNINGS, *Clerk.*
By ROB'T M. LUSHER, *D'y Clerk.*

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Document L. H.
No. 2.
(Introduced by Defendant.)

Transcript from land office.

Filed October 7th, 1858.

C. No. 184. Notice of claim of Marcelin Leblanc. } To the Register and Receiver of the Land Office, in and for the South-Eastern District of Louisiana, at New Orleans.

Marcelin Leblanc claims, by virtue of purchase, a certain tract of land situated in the Parish of Ascension on the west or right bank of the river Mississippi, about twenty-seven leagues about New Orleans, containing two arpents front by about forty arpents in depth, and bounded above by land of Beloni Babin, and below by land of Auguste Broussard.

The said tract of land is part of a large tract (of six arpents front) conveyed on the 18th Sept. 1790, by Don Santiago Livandais, as uncle and tutor of the minor child of Mr. Delery, to Joseph Landry, (dios,) under which latter claimant holds by regular conveyances, said part is now claimed in virtue of said *ancient* possession and by continued and undisputed habitation and cultivation since period of 1790. In support of all which claimant refers you to the evidence filed in the claim of Joseph Miolas Dugas, and, also, that filed in the claim of J. B. Gandin, which will be found full and, he trusts, satisfactory, &c., &c.

New Orleans, June 26th, 1833.

A. B. For the evidence referred to in the foregoing notice, see the preceding claims of Joseph N. Dugas, and J. B. Gandin, Nos.

C. No. 185. Notice of claim of Antoin Diez. } To the Register and Receiver of the Land Office, in and for the South-Eastern District of Louisiana, at New Orleans.

Antoine Diez claims, by virtue of purchase, a certain tract of land situate in the Parish of St. Charles, at about five leagues distant from the river Mississippi, and on the east bank of the Bayou des "Allemands," containing twenty arpents front on said bayou by a depth of about forty-three arpents, running back to take Malin, according to the enclosed plat of survey.

The said tract of land was first settled and established by claimant, from the heirs of said Domé, in the year 1827. It is now claimed in virtue of ancient and undisputed possession and by said claimant, and those under whom he holds for the last sixty years, as aforesaid.

In support of which he herewith produces the necessary evidence required by law, which he prays may be duly recorded and favorably reported on.

New Orleans, June 25th, 1833.

Ala Nouvelle Orléans le 17 dumois d'aout de l'année 1809 et la trente quatriem année de l'independance des Etats Unis d'Amerique.

Je soussigné, Alexandre Trouard, commissionné par Barthelemy Lafou Arpenteur Juré pour le Territoire d'Orleáns voyer de la Paroisse St. Louis et spécialement deputé pour le compté d'Orleans par le Seth Pease Arpenteur général de Territoire Sud du Tennessee, certifié m'ètre transporté à la réquisition de Mr. Pierre Domé le 9 Juillet, 1809, actuellement resident au dit liéu sur rine terre situél au dit quartiér pour en mesurer l'éntendue, fixer les Bornes ou les renouveler si besoin était, établir les lignes entre voisins limitrophes.

Etant sur les lieux Je lás requis de me produire les pieces qui l'auteresait a farie executer l'operation et il m' à produit les pieces surviantes.

Des certificato signés de plu sieurs habitants par lesquels il conste que cette tene a été stablié èly a environ quarante rus par Mr. Charles Domé Pere du dit Pierre Domé et qu'él ne là abandonnée qu á cause des crevasses du Bonnet Carré. Les dits certificats sont signés par Messrs. Henrian Eunul Dugué, Joseph Wiltz, Baptiste Rousselle, Babtiste Rolland, Joseph Dauphin, Adam Viénco, Balthayar Viénco, Henry Metzinger, George Weber, Joe Berthelos, Pierre Bassié, Jean Webre et Pierre Sendos.

[Here follows plat, see orignal page 89.]

Alors étant present èln'y a point de voisins Mr. Pierre Domé propriétaire, Mr. Ranto temoins d'assistance J'ai procédé a la mesure de la ditte terre. Je me transporté au point A, et la prenant une direction Nord 81° 30′ est de ma boussole variation N. 8.30 E., J'ai ouvertet louroyé la ligne limitrophe aux terres des Etats Voisins, et mesurant du dit point A, quinze toises J'ai planté une borne 13—Du point 13 mesurant trente toises sur un terrein Boisé et *vaseux* J'ai planté une autre borne C.—J'ai continué de mesurer Jusqis au point E, au J'ai arretté la mesure, et étant a treize cent quinze toises plus loin toute cette ligne ayant en profondeur quarante arpents et dix toises de A en E. Retournant au point A. Je me suis eleve sur une ligne courant Nord 150′—1—160=300 N. 25 E. 150′ et J'ai mésuré sur la lingne poutreé B H I N vingt arpents ou 600 toises formant la face de la dite habitation. Arrivé au point M J'ai dirégé ma graphomètre au Nord 81° 30′. Est de ma boussole et mesurant trente toises J'ai planté une borne de saule au N. de ce point mesurant trente toises J'ai planté une autre borne O. mesurant encore treize cent vingt toises J'ai arrété mes mesures—la linge ayant en longueur quarante cinq arpents et dix toises—De telle sorte qu'il résulte en faveur de Mr. Pierre Domé un lot de terre borné au Sud et au Nord par les terres des Etats Unis, à l'estpar le lac Malin, à l'ouers par le Bayou des Allemands ayant en surface huit cent soixante huit arpents dont quarante de terre a culture point de Cypriére, dix de prairie haute,

le reste de prairie basse et de Marais. En foi de quos J'ai dommé le présent plan et proces verbal.

Je Soussigné, Exécuteur testamentair de feu Bm. Lafou certifié que l'Original de ce plan et proces-verbal est enrégistré dans le levie d'arpentages C. No. 159 fo. 283 du dit Bm. Lafou. En foi de quos J'ai donné le present pour servir et valoir en cas de besoin.

Nouvelle Orléans, 29 May, 1821.

(Signé) BOUMAIRALT.

Au jourd hui vingt deux du mois de Mars de l'année Mil huit cent vingt sept la cinquante et uniéme de l'Independance des Etats Unis d'Amérique.

Par devant moi Jean M. M. Guirammand Juge de la Paroisse St. Charles au compté des Allemands dans l'Etat de la Louisiane et y remplissant les fonctions de Notaire.

Furent present, Dame Marie Duvieux veuve de feu St. Pierre Domé; taut en son nom personal a cause de la communanté qui existait entre feu Domé son mari et elle, que comme curatrisé *ad bona* de Louis Domé mineur issu de son mariage avec feu Pierre Domé. Louise Adam au nom et comme representant Genéviève Domé son épouse. Et Louis Maitre Jean au nom et comme representant Louise Domé son épouse. Les deux premiers habitant de cette Paroisse et le dernier domicilié dans la Paroisse D'Orleans.

L'esquels en présence de Messrs. Michel Mestayer et B. A. Riebelt temoins competent et requis, ont dit et declaré, vendre, ceder quitter transporter par les presentes, libre de tous dous, dettes, hypotheques, alienation, eviction et de tous autres empechements quelconques.

A Mr. Antoine Diez habitant de cette paroisse ici present et acceptant acquéreur pour lui ses heritiers et ayant cause.

Une habitation. Vacherie, située en cette paroisse a environ cinq lienes du fleuve faisant face au Bayou des Allemands et bornés sur les trois autres cotes par un bayou nommé le Saut d'Ours par le lac Malin et la baié Dorné; la méme propriété qui a été adjugée ce jour au dit Antoine Diez a la vente publique qui a en lieu de la dite habitation en l'office du Juge de la Paroisse, y compris les Batisses à l'exception de celle appartenant a Mr. Louis Adam et Michael Belsom et une certaine quantité de pésux appartenant au dit Louis Adam qui sont reservés.

La presente veute est faite pour et moyennant la somme de cinq cent quinze piastres payable savoir; Deux cent cinquante sept piastres et cinquante cents dans tout le courant du mois de mais Mil huit cent vingt huit et deux cent cinquante sept piastres et cinquante cents dans tout le courant due mois de Mars mil huit cent vingt neuf pour lesquel les dites sommes il a fourni ses billets échéant au dits époques, lesquels après avoir été paraphé ne varietur

par mois ont été remis aux vendues. Et pour sureté du payement des dils billets le sieur acquereur a consenti a ce que la terre acquise aux présentes soit et demeure hypothequé specialement et par privilege et préference jusqu'a parfait paiement.

Et au Moyen de legas precede les vendems declarant se desraiser pleinement et entièrement de tous leur droits et titre de propriété sur la dité terre pour les transferer au sieur acquereur qui sén reconnait en possession et en etre satisfait, voulant que ce dernier en Jouisse et puisse disposes des au Jourd hui et pour toujours comme d'un bien à lui apparte nant au moyen du present acte. C'est ainsi et promettant, obligeant, renonçant, &c.

Fait et passé en mon office les Jour, mois et au que dessus et ont les comparans signé *signé* aux presents avec moi et temoins sus nommés, a l'exception de Madame Voe Domé et de Mr. Louis Maitre Jean, qui requis de le faire, ont dé claré ne le savoir.

L'original est signé—Louis Adam, Marque Orde X de M^me^ V^re^ Dome, Marque Orde X. de Louis Maitre Jean, Mde Maytayer, P. A. Riebelt, J. M. M. Guirammand, Not. Pub. et Juge. Pour copié conforme à l'original. Paroisse St. Charles, le 14 Mars, 1828.

(Signé) J. M. M. GUIRAMMAND,
Juge Not. Pub.

Moi Jn. Adam Vickner reconnais d'avoir vue le sieure feux Dome residant dans le Bayou des Allemands, etabli depuis quarante et quelques années que Je puis certifier.

Ce 6 Sept., 1809.

(Signé) JEAN ADAM VICKNER.

Moi Balthazar Vickner, Je certifie avoir oue le sieure feux Domé établi de dans le Bayou des Allemands depuis quarante et quelque années que Jepuis certifier, ce 6 Septembre, 1809.

(Moy) Je soussigné, certifie à qui appartiendra que J'ai parfaite connaissance que Daumé demeu rait depuis plus de quarante aus dans le Bayou des Allemands voisiri de lui de ma vacherie qui pours lors etat Mr. Joseph Villars mon beau pere. Ce huit Septembre Mil huit cent neuf a'mon habitation.

(Signé) FLEURIAN.

Je certifie que la terre du Bayou des Allemands appartient à Mr. Charles Domé, depuis quarante et quelque années et qu'èl y a que les crevasses du Bonnet Quarré qu'ils l'ent fait sortir.

Le 6 Septembre, 1809.

(Signé) JEAN WEBRE.

Je certifie que la terre du Bayou des Allemands appartient a Mr. Charles Domé, depuis quarante et quelque années et qu'èl y a que les crevasses du Bonnet Quarrés que l'on fait sortire de l'habitation.

Nouvelle Orleans, le 1 Sept., 1809.

(Signé) HENRY MONTZINGER.

Je certifie que la terre du Bayou des Allemands appartenant a Mr. Charles Domé, depuis quarante et quelque anne. Et qu'èl y a que les crevace du Bonnet Quarre qué l'on fait sortire.

Ce 7 Septembre, 1809.

(Signé) PIERRE BOSSIÉ.

Monsieur Pierre Boudron, residant à la Louisiane sur l'habitation appartenant à Mr. Antoine Diez, et connu sous le noin de la Vacherie dans la paroisse St. Charles, déclare sous serment qu'èl est à sa connaissance que depuis plus de quarante aus que cette habitation est établie en Vacherie.

(Signé) PETER BOUDRON.

Sworn to and subscribed before me, May 21st, 1833,

GME. PREVAL.

Land Office, New Orleans.

October 5th, 1857.

I hereby certify the foregoing to be a true copy of the notice of Claim C, No. 185, filed at this office by Antoine Diez; also the plan, notes of surveyor, conveyance, and evidence of record in my office.

Witness my hand on the day and year above written.

(Signed) LOUIS PALMS,
Register.

No. 310. AMBROSE LANFEAR *vs.* H. L. HUNLEY.	Document L. H. No. 3. (Introduced by Defendant.)

Transcript from Land Office.

Filed October 7th, 1858.

B. 41. Notice of Claim of Andry Pizani. } To the Register and Receiver of the Land Office in and for the South-Eastern District of Louisiana, at New Orleans.

André Pizani claims, by virtue of an inheritance, a certain tract of land, situate in the Parish of St. Charles, about fifteen leagues

from the City of New Orleans, on the Bayou des Allemands, and containing twelve arpents front on the left bank of the said Bayou, by the ordinary depth of forty arpents.

Pierre Rayet, alias Raymond, the first husband of claimant's mother, obtained an order of survey for said land on the 15th February, 1771: in virtue of which survey it is claimed, and also of continued and uninterrupted possession and cultivation for upwards of forty years past.

In support of which, claimant herewith produces full and authentic evidence, which he prays may be duly recorded and favorably reported on, &c., &c.

New Orleans, June 20th, 1833.

Monsieur Robin, Command't à la cote des Allemands établéra le suppliant en lui donnant les 12 arpens de terre qu'él demande dans le Bayou des Allemands ne causant aucane prejudice aux circonroisins et la dite terre étant vacante, auxquels il y marquera les bornes et alignements en présence des dits voisins et n'y ayant aucane opposition et y le expliquera au bas de cedécret les dilligences qu'èl executera et signera comme tous les assistants.

De son titre en forme fesant savoir au suppliant Pierre Rayet de faire les Chemins, leveés, clotures et defricher tous la devanture des dites 12 arpents sur la profondeur de deux dans tout le courant des trois premières anneés anisi que le foces necessaire pour les degonts des caux de plus suivant qu'èl est prescrit dans le réglement du 18 Ferrier, 1770.

A la Nouvelle Orleans le 15 Ferrier, 1771.

N. B.—The original of the foregoing was extremely worn, and illegible in several places.

STATE OF LOUISIANA.

City of New Orleans.

Personally came and appeared Jean Manuel Perrin and Pierre Coulon: the first of the Parish of Jefferson, and the other of this city; who, being duly sworn, declared that they are aged, the first fifty-five years, and the other sixty-five years.

That they are well acquainted with a certain tract of land owned and claimed by André Pizani, situate in the Parish of St. Charles, about fifteen leagues distant from this city, on a bayou known by the name of "Bayou des Allemands," and containing twelve arpens front on the left bank of said bayou, by the ordinary depth of forty arpens. That the said tract has been known to these deponents for a number of years past: that is to say, to the said Perrin for the last forty years or thereabout; and that the same, to their personal knowledge, has, during that time, been constantly and uninterrupt-

edly inhabited and cultivated, as private property, by the said Pizani and those under whom he holds.

These deponents further declared, that they have it from undoubted authority, to which they yield full belief, that an order and warrant of survey was issued by the Spanish Government in favor of Pierre Raymond, the first husband of the said Pizani's mother, for said land, on the 13th February, 1771.

his
JN. M. ⋈ PERRIN.
mark.

his
PIERRE ⋈ COULON.
mark.

Sworn to and subscribed at New Orleans, this 14th May, 1833, before me,

WM. CHRISTY,
Notary Public.

LAND OFFICE, NEW ORLEANS,
October 2d, 1857.

I hereby certify the foregoing to be a true and correct copy of the notice of claim No. 41, in favor of André Pizani, and evidence, filed herewith, of record in my office.

Witness my hand, at the place and time above written.

(Signed,) LOUIS PALMS,
Register.

No. 310.

AMBROSE LANFEAR	}	Document.
vs.		L. H., No. 4.
H. L. HUNLEY.	}	(Introduced by Deft.)

Decision of Commissioners of General Land office, &c., &c., &c.
Filed October 7th, 1858.

GENERAL LAND OFFICE,
December 1st, 1857.

I, Thomas A. Hendricks, Commissioner of the General Land Office, do hereby certify that the annexed, on pages 1, 2, and 3, is a true and literal exemplification from the record, vol. 17, pages 22, 23, and 24 of this office.

In testimony whereof, I have hereunto subscribed my [SEAL.] name, and caused the this office to be affixed at the City of Washington, on the day and year above written.

(Signed,) THOMAS A. HENDRICKS.
Commissioner of the General Land Office.

GENERAL LAND OFFICE,
January 25th, 1856.

SIR:—In answer to your communication of the 1st September last, setting forth the reasons upon which you base your approval of the contested location of the children of Paul Toups, deceased, I have to say that, after a careful and full examination of all the papers and evidence to which you refer, I am compelled to decide adversely to your report.

On the 21st of November, 1795, Paul Toups applied to the Baron de Carondelet for a grant of land in the locality called "Les Coteaux de France," about eleven leagues distant from the City of New Orleans, and about three leagues and a half distant from the Mississippi river, of an average breadth of sixteen or eighteen arpents, and a depth of about two and a half leagues, reaching a bayou called Crocodile, which runs parallel with the river, taking said land from the crossing of said bayou to an extensive marsh lying behind Bayou des "Cannes."

The part of the grant, which, in the petition, is estimated at eleven leagues from the city, and two and a half leagues from the river, is beyond the Bayou Crocodile, for the grant is spoken of as reaching from that point to said bayou, and the entire grant is described as included within the said bayou at the one end, and the marsh behind the Bayou de "Cannes" at the other end. The petition limits the tract upon the north-east to the principal bayou called Crocodile.

That bayou is its boundaries in that direction, and the supposed length of the tract cannot carry it beyond the boundary.

The order of survey, made on the 12th day of March, 1796, does not change the description in the application, or render it more certain.

In the report submitted to Congress, January, 1812, under the act, March 3d, 1807, the claim, under the application and warrant of survey above mentioned, was confirmed to the children of Paul Toups, but with less certain description.

On the 21st day of October, 1807, Daspit St. Amand caused a survey to be made by F. V. Pothier, a sworn Surveyor, by which survey the tract is bounded in the front by Bayou Crocodile, and in the rear by Bayou des Cannes, and upon one side by low prairies, and on the other by quagencres, containing 5,824 superficial arpents. Inclosed a translated copy and a map of the survey.

On the 17th day of November, 1807, the children of the said Paul Toups conveyed to said St. Amand the tract called "Les Coteaux de France," granted to them by Baron de Carondelet, by a description very similar to that found in the application made by Paul Toups.

I enclose translated copy of the conveyance.

Under the act of 27th of February, 1813, entitled "An act giving further time for registering claims to land in the Eastern and Western District of the Territory of Orleans, now State of Louisiana, the said Daspit St. Amand filed and caused to be recorded in the office of the Register, in the City of New Orleans, the application made by said Paul Toups, and the warrant of survey issued therein, and, also, the said survey of 1807, and the plat thereof, and the conveyance made to him as aforesaid, as the notice and evidence of his claim.

On the 20th November, 1816, the Register and Receiver, by virtue of the said act, 27th February, 1813, reported to this office, that the said claim of Daspit St. Amand did not stand confirmed by law, but that it ought to be confirmed. By the act, 11th May, 1820, the said claim is recommended was confirmed.

The claim of St. Amand is based upon the application made by Paul Toups, and the warrant of survey issued thereon, and is identical with the said claim of Paul Toups' children, and was confirmed according to the survey and plat of 1807, and the description filed in 1813, and is bounded in front by the Bayou Crocodile, and in the rear by the marsh behind the Bayou des Cannes, and by the prairies and quaginere on the side.

Ambrose Lanfear claims through St. Amand, and is restricted to the limits of the St. Amand claim, as confirmed.

It is alleged that it is uncertain that Bayou is meant by the "Bayou Crocodile." There appears to be but one bayou by that name on the plat of survey by Hawkie, and it is identical with the "Bayou Crocodile" in the plat of survey by Pothier.

There is no doubt that the land confirmed as aforesaid to the heirs of Paul Toups, and to St. Amand, is the property commencing from the south side of "Bayou Crocodile," named on said plats of Hawkie and Pothier, and running to the great marsh on the other side of Bayou des Cannes, and Mr. Lanfear cannot legally claim any land north of said "Bayou Crocodile," to the injury or prejudice of the settlers or others who may be entitled to pre-empt.

You will cause this claim to be surveyed in accordance with the views herein expressed, and report the same to this office.

I am, respectfully,

Your ob't servant,

(Signed) THOS. A. HENDRICKS,
Commissioner.

WILLIAM J. MCCULLOH, Esq.,
Surveyor-General.

Donaldsonville, Lna.

(Copy.)

Surveyor-General's Office,
Donaldsonville, Lna., 1st September, 1855.

SIR:—

Pursuant to your instructions of the 17th July, 1855, I now submit the reasons in which this office approved the contested location of the children of Paul Toups, deceased, certificate No. 74, of Robertson and Lewis, in township 13 and 14, South Range East, South-Eastern District, west of the Mississippi river.

The documentary evidence in the case consists of:

1st. Requete of Paul Toups, addressed to Carondelet.

2d. Order of survey by Carondelet.

3d. Application of 31st December, 1806, by Paul Toups' children to the Commissioners of the Eastern District, for a confirmation of the inchoate title.

4th. Certificate of confirmation by the Commissioners.

5th. Commissioners' report on the claim. Copies of the order and requete, one transmitted to the department, with my letter of May 5th, 1855. The application of the children of Paul Toups is so similar to the report of the claim, as published in the State papers, that a copy of it most necessary. The certificate of confirmation is the only muniment of title binding upon this office, in location this claim; it is *literally* as follows: "The children of "Paul Toups, deceased, are entitled to a patent for a tract of land "situate in the County of Acadia, at the place called Les Coteaux de "France, at the distant of three and a half leagues from the west-"ern bank of the Mississippi, having eighteen arpents front and "two and a half leagues in depth, the same being claimed by virtue "of an order of survey issued in the year 1776, and having been "inhabited and cultivated on the 1st day of October, 1800."

F. B. ROBERTSON,
JOSHUA LEWIS,
Comm'rs.

NEW ORLEANS,
December 31st, 1811.

The recent location of the claim, thus confirmed, was approved under the belief that the certificate, in the absence of fraud or error, precluded a departure from the dimensions prescribed by it—for the 4th section of the act of the 3d March, 1807, under which it was issued, makes it final against the government, "any act of Congress to the contrary notwithstanding."

That section imposes upon the Commissioners an observance of French and Spanish laws and customs in issuing their final certificates, thus implying that certificates contrary to these authorities should not be final against the United States. It might be argued that this restriction devolves on this office the duty of comparing

the certificate in question with those laws and customs, and of construing accordingly; but it is believed that it is not empowered thus to set adjudgment or the legality of the Commissioners' acts, and to determine the intricate and embarrassing questions of conformity or non-conformity with colonial precedent. In case of a certificate manifestly violating this provision, the office might refuse to carry it out without special instructions on the subject; but in the case of Toups no such difficulty exist; and the only question has therefore being here, shall the terms of the certificate be enforced? This involved the preliminary inquiry as to the point on the Coteau, whence the depth of two and a half leagues, specified in the certificate, should be computed.

That the *Coteau de France*, now traversed by the New Orleans and Opelousas Railroad, was the locality meant, has never been a subject of doubt with the office. It appeared to be a fact at first glance, and a review of the case affords no grounds for questioning it.

A beginning point for the location being thus the first consideration, it becomes necessary to examine evidence *dehors* the certificate. In that instrument the doubt originating the inquiry is a latent one, and hence a recourse to other evidence was not deemed inconsistent with the conviction that the certificate was, under the circumstances, on estoppel as to ministerial and executive officers.

Toups petitioned for land extending from a great marsh beyond the Bayou aux Cannes to *Bayou Crocodile*. But much doubt exists as to the bayou meant in his requete under the latter name, though none has been suggested as to the position of the *marsh* on it the *Coteau* ends. The marsh itself is almost impenetrable, and has long time known as "Le Grand Marias."

The office then regarding this as a reliable basis of operations, authorized the extension of the claim, thence two and a half leagues up the *Coteau* towards the Mississippi river, and approved the location accordingly.

Two and a half leagues by eighteen arpents, the dimensions prescribed by the certificate, gives an area of 3163.40 acres, Hanke's location, as approved, observing the width of eighteen arpents, gives an area of 3227.34 acres, being an excess of only 63.74 acres. This inconsiderable discrepancy in a claim so large and so vaguely defined indicates the general occurency of the location, and the fidelity with which the depth required has seen adhered to. But it is said by squatters in Township 14 South, Range, 20 east, that the Bayou Crocodile meant by the *requete*, is that which bounds Daspit St. Amand in the north-east, and that the contested claim should not extend further north than its southern bank. In weighing this objection *little* consideration is due to the right, actual or alleged, of the squatters urging it. Some of them are precluded from the right of protesting by the fact that they have squatted out

of the claim: Others by the fact that they squatted on the claim after its location, with full knowledge that they were trespassers, and all appear to be mere adventurers, recently attracted to the country by the facilities for speculation, more or less laudable, afforded by the great highway now intersecting the region and pretending for their improvements, neither antiquity of settlement nor pecuniary value. The fact, however, thus urged, is intrinsically important and as such worthy of examination, independently of the precuriens and duledus rights of those pleading it.

It is admitted by the parties interested in maintaining the location, that the cattle formerly kept in the "vacherie" by Toups and his successors were limited in their range to the southern bank of the Bayou Crocodile, contended for by the squatters, and that a bridge formerly crossed it defended by bars, to prevent the escape of the cattle. Hawke reports an old *vacherie* bridge at the same point, with the old vacherie road leading over it; and the bayou appears parallel to the Mississippi river. These circumstances all coincide with those mentioned in the requete; but that document, though calling for the south bank of Bayou Crocodile, as the northern limit of the land petitioned for, asks for a depth of *two and a half leagues* whereas a depth from "*Le grand marais*" to the bridge is only about *one and a half league* were the call for *Bayou Crocodile*, free from ambiguity it would after cede those per area, or numerical depth, on the general rule that call for course, distance, and quantity, are subsidiary to call for natural objects. But is the *reason* of this rule applicable to the present case? The object of evidence is the attainment of the greatest possible degree of certainty and view of his motive the existence of natural boundaries being *facts* palpable to all men, and but little liable to his conception. Such boundaries in competition with imaginary lines, are justly entitled to the preference, for the latter are inherently liable to this constructions, have no physical representation on the ground, and even when defined there by lines and corners, are still liable obliteration and change unfortunately, however, the facts, of the Toups' claim forbid the attainment of certainty through any rule of interpretation. *Bayou Crocodile* are known throughout Louisiana, and it is proved in this case, that the location of Toups covers *three* streams of that name. The bayou crossed by the *vacherie* bridge, the bayou which traverses and forms the *coteaux*, and *and* a little bayou running *parallel* to the *Mississippi river*, and emptying into the second one now mentioned, about twelve chains above the intersection of the latter, by the north boundary of Township 14. It is this latent ambiguity in the term *Bayou Crocodile*, as occur in the *requete* which defeats the application of the general rule of evidence above, and as therefore induced this office to refer the numerical call for depth as affording, in the peculiar difficulties of the case, a greater

probability of correctness than is afforded by the call for Bayou Crocodile.

The depth assigned by the certificate is equal to 606.05 chains; that obtain by the approved location is 642.90 chains, adopting as the test the lineal distances given in the S. E. lines of the claim, a mode of measurement adopted by the deputy with the previous approbation of the office. The location thus manifest an excessive depth of 35.85 chains, and it is a singular coincidence, at least, that this distance deducted from the north end of the claim by a line parallel to the back of the 80 arpents tracts, fronting on the Mississippi river, and township 13 south ranges 20 and 21 east, would make the end line of the claim cross the bayou, forming the coteau at the mouth of the *third Bayou Crocodile*, above mentioned.

A location reaching the rear lines of the 80 arpents tracts has been approved, because the claimants have thus held the land for many years, (as will fully appear from the testimony transmitted to the commissioner on the 5th of May (last,) and because such location gives a quantity more in accordance with that resulting from the certificate than would be obtained by the depth, if limited to third Bayou Crocodile, above.

I have, as required, recalled the map of Township 14, South range 20 east, and diagram of Township 13, South R., 21 east from the Register of New Orleans, and shall detain them until your decision be communicated to me.

Respectfully, your ob't serv't

(Signed) WM. J. McCULLOH,
Sur. Gen'l L'na.

HON. THOS. A. HENDRICKS,
Comm'r Gen'l Land Office,
Washington City, D. C.

SURVEYOR-GENERAL OFFICE,
Donaldsonville, December 5th, 1857.

I certify the foregoing to be a true copy of the original, recorded in this office.

(Signed) WM. J. McCULLOH,
Sur. Gen'l L'na.

No. 310.
AMBROSE LANFEAR vs. H. L. HUNLEY. } Document L. H. No. 5. Introduced by Defendant.

Certificates from Land Office, proving settlement.

Filed October 7th, 1858.

U. S. Land Office, New Orleans, Sept. 30th, 1857.

I hereby certify, that the following declaratory statements were filed at this office, by virtue of settlements upon certain lands in Township 14, South of Range 20, east, (west of the river Mississippi,) and *and* that said notices of intention to claim said land, under act of 4th Sept., 1841, bear date and *and* year, viz.:

R. N. Chapman filed declaration,
No. 551. October 14th, 1853.
Joseph Marionneaux filed declaration,
No. 555. October 15th, 1853.
W. C. Fisher filed declaration,
No. 643. November 21st, 1854.
H. L. Hunley filed declaration,
No. 648. December 26th, 1854.
J. B. Galagher filed declaration,
No. 661. February 22d, 1855.
A. Puysegur filed declaration,
No. 663. March 1st, 1855.

Witness my hand, at the place and time above written.

(Signed) LOUIS PALMS,
Register.

No. 2. Doc. 6.

U. S. Land Office, New Orleans, Sept. 30th, 1857.

I hereby certify, that Emile St. Amand, Henry Eagleston, and D. A. Long, of the Parish of St. Charles, applied to enter, and filed their declarations of intention to claim certain land in the Township 13, south of Range 20 east, (west of the river Mississippi,) in view of their settlement, by virtue of the act of 4th Sept., 1841, viz.:

Emile St. Amand filed his declaratory statement, No. 649, January 2d, 1855.
H. Eagleston filed his declaratory statement, No. 662, March 1, 1855.
D. A. Long filed his declaratory statement, No. 674, April 18, 1855.

In faith whereof, I hereunto subscribed my name on the day and year above written.

(Signed) LOUIS PALMS,
Register.

No. 3. Doc. 7.

U. S. Land Office, New Orleans, December 8th, 1857.

I, Louis Palms, Register of the land office for the South-Eastern District of Louisiana, do hereby certify, that Wm. Fee, of the Parish of St. Charles, filed at this office, on the 7th August, 1854,

his declaratory statement and intention to claim, under the pre-emption laws, a certain tract of land described as being situate in Township 14, south of R. 20 E, (west of the Mississippi river :) And I further certify, that his application to enter said land is suspended in consequence of the land applied for, being supposed to be embraced within the limits of the claim of Daspit St. Amand, No. 529, and of the children of Paul Toups, No. 74.

In faith whereof, I have hereunto signed my named, on the day and year before written.

(Signed) LOUIS PALMS,
Register.

No. 4. Doc. 7, 8.

Land Office, New Orleans, October 5th, 1857.

I hereby certify, that Leopold Boutté, of the Parish of St. Charles, applied to enter and offered to file his declaratory statement of settlement, and on a certain tract of land in Township 14, south of Range 20, east, (west of the river Mississippi, but was refused by me on the ground, that the map then on file at this office represents the tract upon which he had settled, within the limits of the claim of the children of Paul Toups.

Witness my hand, at the place and month, day and year, above written.

(Signed) LOUIS PALMS,
Register.

No. 310.

AMBROSE LANFEAR vs. H. L. HUNLEY. } Document L. H. No. 6, 8, 9. (Introduced by Defendant.)

Admission filed October 7th, 1858.

It is admitted that all parties defendant to this suit, located and lived on the several places which they now claim, and described in the several declarations of location, severally made by them in the U. S. Land Office, at New Orleans, and that they have since lived and still live on the premises.

(Signed) HANDLIN & ST. PAUL,
for A. LANFEAR.

December 10, '57.

Testimony of Leonard.

No. 310.	Doc. L. H., No. 7–9,
AMBROSE LANFEAR	No. 10.
vs.	(Introduced by Def't.)
H. L. HUNLEY.	Filed Oct. 7th, 1858.

South-Eastern District of Louisiana.

Before me, the undersigned Register of the Land Office at New Orleans, personally came and appeared ———, of the Parish of ———, who, after being duly sworn according to law, did depose and say, that, well acquainted with H. L. Hunley, of the Parish of St. Charles, who is a citizen of the United States of America, that it is, to the knowledge of the deponent, that the said Hunley has in person made a settlement and erected a dwelling-house on a certain tract of land, situate and lying in Township number 14th of R, Number 20, designated as and being north-east quarter of Section No. 2, on or about, took possession of and commenced residing on said land, and still reside there; that he has two acres under cultivation, and that, to the best of his deponent's knowledge and belief, the said Hunley has not quit or abandoned his residence on his own land in this State, to make the settlement by virtue of which he claims a right under the act of the 4th September, 1841.

And the Deponents further declare, that they are no manner interested, either directly or indirectly, in the entry of said land.

Sworn to and subscribed before me, this (Blank) } Blank.

Admitted as to H. Hunley, Esq.

(Signed,) HENRY ST. PAUL.

No. 310.	
AMBROSE LANFEAR	Doc. L. H., No. 8–11.
vs.	
H. L. HUNLEY.	Introduced by defendant.

Testimony of James B. McGough.

Taken by consent.

Filed October 7th, 1858.

James B. McGough, a witness for defendant, says: He followed Mr. Hawke whilst surveying sections 2, 3, 10, and 11 of Township 14, R 20, and saw him establish the corners of those sections; was frequently with him during the survey of the claim lines; there were two white men generally carrying the chain, but frequently saw two negroes carrying the chain; saw those negroes sticking down and pulling up stakes; no chopping was done by white men, but generally by the negroes.

Cross-examined.

Is a settler on the ridge; still claims his land, though residing in town for medical treatment.

Resided on the ridge from February, 1854, to April, 1855. Don't speak French. Knows a few old planters there; they speak bad English. Had never been in St. Charles till he went there to locate.

Admitted. (Signed,) HENRY ST. PAUL, *Att'y.*

It is admitted that C. Leonard will swear to the same facts, except that he does not reside on the land in dispute, nor claim any of it.

(Signed,) H. ST. P.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.
Doc. L. H.
No. 12.
Introduced by defendant.

Printed pre-emption Instructions, under acts of 4th September, 1841, and 26th August, 1842, to General Land Office, June, 1856.

Filed October 7th, 1858.
Hereto annexed by consent of parties.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.
Document L. H.
No. 13.
Introduced by defendant.

Testimony of Gillespie—Taken by consent.
Filed October 7th, 1858.

A. Lanfear
vs.
R. N. Chapman & als.
Evidence by consent, subject to all legal exceptions, except as to form.

Theodore Gillespie, witness for defendant, says he is Deputy Surveyor-General of the State of La.; being shown a copy from the Register of the Land Office, of date 7th December, 1857, of T. XIV. & XIII. S. R. 20 & 21, as approved, and in the United States Land Office, on file, says: That the width of the St. Amand claim therein, (N. 529, in T. 14, R. 20,) is about 62 arpents, and the distance between the claim marked St. Amand (N. 528) and the lower line claim marked Jos. Wagespank, (sect. 17,) in T. 17, R. 21, about $\frac{68}{80}$ of a mile.

Has seen the residence of Emile St. Amand, Henry Eagleston, H. L. Hunley, Jos. Marionneaux, R. N. Chapman, Leopold Boutté, Wm. C. Fisher, A. Brysegur, Mrs. Gallagher, whose residence are all located as described on the plat of survey, and within the lines assigned to Paul Toup's grant.

Has examined the T. lines between T. 13 and 14, where it crosses the P. Toups' claim, as surveyed by Hawke, U. S. S. Knows his marks, and recognized said marks on said lines.

Found the corner between sect. 1 and 2, (5th mile corner east,) from that corner traced a section line south from the township line between sect. 1 and 2.

Also, traced the lines between sect. 2 and 3, through the Toup's claim, and the lines between 3 and 4, and 3 and 10, which all appear to have been drawn by Hawke, through said claim. I traced said lines, i. e. line between 2 and 3 to the 4th, since corner on the township line; saw the said corner properly marked line between 3 and 4, to corner du Bayou Crocodile, on the boundary of the N. E. claim of S. Amand, and line between 3 and 10, to the corner of Bayou Crocodile, fronting St. Amand claim.

He recognizes the residence of Emile St. Amand to be on the section represented as 119 of the Paul Toups' claim, did not exist, now sect. 120 in Paul Toups, and on the natural sect. 36, and in the S. W. ¼ of said sect. 26.

The section lines above-mentioned locate the settlement of Henry Eagleston on the S. E. ¼ of section 35, in Township *Thirteen*, R. 20, within Toups' claim.

Of H. L. Hunley, on the N. E. ¼, sec. 2, T. 14, R 20.
Of Joseph Marrineaux, N. W. ¼, " " "
Of R. N. Chapman, N. E. ¼, sec. 3, in " "
Of Leopold Boutté, N. W. " " "
Of Wm. C. Fisher, S. W. ¼, " " "
Of A. Puysegar, S. E. ¼ " " "
Of Madam Galagher, S. E. ¼, sec. 4, " "

I recognize all the corners of the sections 1, 2, 3, 4, and 10, before mentioned, as having been marked by a United States deputy surveyor, and believe the same were made by Maurice Hawke, United States deputy surveyor, in the 4th qr. of 1854, and the 1st qr. of 1855.

The bayou presented on Hawke's plan as Bayou Crocodile, is from one hundred and twenty feet wide on the ridge from crown to crown of the banks.

The bayou represented on Hawke's plan as Petit Bayou, from Boutté's Station to Bayou Crocodile, is from 20 to 100 feet from crown to crown; near the mouth of Petit Bayou it is about 120 feet; at Boutté's Station, and for the first two miles down, it has a mean width of thirty feet.

The Petit Bayou is not one hundred and twenty feet from crown to crown of the banks, except for the first five hundred and fifty to six hundred feet from its junction with Bayou Crocodile; at Bouté's Station it is only about 20 feet from crown to crown. The Petit Bayou is (in my opinion) a channel formed by the waters overflowing from the Mississippi, and taking their way to the Gulf. The

ridge formed on each bank of this bayou, is made by the deposit from this overflow water. The ridges on the banks of Petit Bayou are higher immediately on the bayou than farther back; the land falling off gradually till, at the distance of about one-fifth of a mile from the bayou, the land is on it level with the bottom of said bayou.

The bed of Petit Bayou is above ordinary high water of the Gulf till within ¼ of a mile of its junction with Bayou Crocodile, when at high-tide the water backs up into it.

The bed of the bayou, for the first two miles from the N. E. end of the P. Toups' claim, is covered with wild canes, which is an evidence of high land, or at least land not frequently overflowed.

The small bayous or runs, forming Petit Bayou, and uniting about 12 or 15 chains N. E. of the north boundary of T. 14, R. 20, on small swails or runs overgrown with wild canes, and their beds are about 2½ feet lower than the banks. These, as before stated, are only leaders of the surplus water of the Mississippi river.

The bayou, called Crocodile on Hawke's plan, is a bayou crossing the ridge at right-angles, uniting two marshes, and ending in them; this bayou in its course is nearly S. E., and is therefore nearly parallel to the general course of the Mississippi, opposite it.

Petit Bayou and its tributaries run S. W., and at right-angles to the Mississippi river.

The ridge about Petit Bayou, and on which the Paul Toups' claim is located, is a ridge commencing on the Mi. river, at about sect. 17 in T. 13, R. 21 E., and running S. W. to the Bayou des Allemands.

The swamp on the south side of the ridge does not cross the railroad.

I suppose the distance from the Mississippi river to the very head of Petit Bayou, and thence by the meanderings of said bayou to Bayou Crocodile, to be between 8 or 7 miles.

Bayou Crocodile is about one mile and one-eighth in length, as discovered by actual survey made by himself.

Bayou Crocodile has clearly defined high banks from marsh to marsh.

(Signed) THEODORE GILLESPIE,
Dep'ty Sur. Gen'l La.

(Signed) HANDLIN & ST. PAUL,
For A. Lanfear.

(Signed) H. L. HUNLEY, *for Defendants.*

No. 310.
AMBROSE LANFEAR vs. H. L. HUNLEY. } Document L. H. No. 14.

(Introduced by defendants.)
Testimony of Wm. Polk, under commission.
Filed October 7th, 1858.

Third Judicial District Court, Parish of St. Charles.

THE STATE OF LOUISIANA:

To the Hon. C. M. Bradford, or to any other Justice of the Peace in and for the Parish of Orleans, greeting:

A. LANFEAR vs. R. N. CHAPMAN. } No. 312. { Know ye, that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority diligently to examine all witnesses whatever, as well on the part of the plaintiff as of the deft., in a certain suit now pending in the Third Judicial District Court, in the Parish of St. Charles, wherein Ambrose Lanfear is plaintiff, and R. N. Chapman and others defendants.

Therefore, we desire you at certain times and places by you to be appointed for that purpose, you cause the said witnesses to come before you then, and there examine them apart, upon their respective corporal oaths, first taken before you upon the Holy Evangelists; that you reduce their examinations to writing, and when you shall so have taken them, you send the same with this commission, closed up under your seal, to us in our said Third Judicial District Court, in the Parish of St. Charles, on or before the first Monday of Feb'y next, 1858.

Witness the Hon. Victor Burthe, Judge of our said Court, this eighteenth day of January, in the year of our [SEAL.] Lord one thousand eight hundred and fifty-eight, and the 82d year of the Independence of the United States.

(Signed,) C. ST. MARTIN, *Clerk.*

A. LANFEAR *vs.* R. N. CHAPMAN. } Interrogatories to be propounded to William Polk, witness for defendant in this case, now residing in the State of Georgia.

1st Interrogatory. Have you been a partner of the plaintiff, Ambrose Lanfear, in the "Ashton plantation," Parish of St. Charles, west bank of the river, and about twenty-four miles from New Orleans? If so, when, and how long?

2d Interrogatory. Was you or not a part owner with said Lanfear in the Vacherie of Daspit St. Amand?

3d Interrogatory. Did said Lanfear, or you, as his agent, or acting for Polk & Lanfear, cause to be surveyed in 1853 or 1854, any lands in Townships 13 and 14, south R., 20 east, in the rear of said plantation, and on a ridge now traversed by the Opelousas R. Road, or not? If so, by whom were they surveyed, who paid for the survey, and for what purpose was it made?

4th Interrogatory. If the said survey was made, what lands were surveyed as public and what as private? If any map of this survey was made, where was the Vacherie of Antoine Daspit St. Amand represented to be, according to said survey?

5th Interrogatory. Were any settler, or other persons, placed on said land, or any part thereof, (described by said survey as public land,) by Lanfear or yourself, acting for Polk & Lanfear, to hold the same for the benefit of said Lanfear, or Polk & Lanfear, or not? If so, what where the names of those persons, or what agreement was made between them? Were they naturalized, or had they declared their intentions to become citizens of the United States of America, &c.? If so, when and where? Were the quarter section lines of the aforesaid survey run in such manner as to give exact locations to the said settlers? and did any of the slaves of Polk & Lanfear assist in building their cabins, or not? Please state all you know about any agreement of the kind referred to, as particularly if fully interrogated thereon?

6th Interrogatory. Did Lanfear, or Polk & Lanfear, support any persons settled on these lands? If so, who are they? Were they furnished with provisions?

7th Interrogatory. Did Lanfear support or pay wages to the said settlers, or otherwise carry out any agreement of the nature referred to, after the dissolution of the partnership between him and yourself?

8th Interrogatory. Please state anything further that may be of advantage to the defendants in this case, as if fully interrogated thereon, and if you have any map, sketch, or plan of the survey referred to, will you please attach it to your answer to the interrogatories as a part and explanation of said answer.

(Signed,) SOULÉ & HUNLEY.

[SEAL.]

A true copy.

Parish of St. Charles,
January 18th, 1858.

(Signed,) C. ST. MARTIN, *Clerk*.

UNITED STATES OF AMERICA,

THE STATE OF LOUISIANA,
Parish of Orleans. City of New Orleans.

Deposition of one witness taken and subscribed before me, Charles M. Bradford, second Justice of the Peace for the Parish of Orleans,

in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the 20th day of January, A. D. eighteen hundred and fifty-eight, at o'clock A. M., of said day, at the Second Justice Court, in the City of New Orleans, Parish of Orleans, in the State of Louisiana, in pursuance to a commission, hereto annexed, and to be read as evidence in a certain cause now pending in the Third Judicial District Court in and for the Parish of St. Charles, wherein Ambrose Lanfear is plaintiff, and R. N. Chapman et al. defendants. On the part of defendants, William Polk, a witness, known to me to be of lawful age, being to me at the time and place aforesaid produced, and being by me first duly sworn upon the Holy Evangelists, and according to law, to testify the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say, and answer as follows, to wit:

Ans. to 1st Interrogatory. I was a partner in the Ashton plantation with Ambrose Lanfear, from about 1845 to 1854.

Ans. to 2d. I was.

Ans. to 3d. Lanfear & Polk caused these lands to be surveyed in or about 1853, by A. J. Powell; I do not remember the exact amount paid for surveys, as the bargain was made by Mr. Lanfear; the object was to place squatters on said lands to secure them for Lanfear & Polk.

Ans. 4th. Lands in township 14, east of Bayou Crocodile, were surveyed as public lands, and run off into quarter sections in order to locate the squatters with precision; the vacherie always was represented, and lays west of Bayou Crocodile; a map of these surveys was made for us by Mr. Powell; Bayou Crocodile is about $2\frac{3}{4}$ miles from Boutté's station, on Opelousas Railroad.

Ans. to 5th. I have stated that squatters were placed on the land and there were seven of them—five named Huot, one named Lucien Maillot, and one German, called Nick. Seven of them we caused to file their declarations to become citizens of the United States at the Courthouse in St. Charles, in order to entitle them to right of pre-emption, and paid the cash of the same. One or two were taken in New Orleans. The slaves of the plantation assisted in building cabins for these squatters, and they were placed according to Powell's directions on each squatter section. We agreed to give each squatter, I believe, two hundred and fifty dollars, ($250,) and support them until the land was secured, as Powell told us it would not require longer than six months. Mr. Lanfear himself settled with these men.

Ans. to 6th. See last answer.

Ans. to 7th. My answer to third interrogatory is all I can say in answer to this.

Ans. to 8th. I know nothing farther, unless that it be that Mr. Lanfear urged this arrangement, and co-operated in the agreement

referred to, and he, as well as I, always recognized the land between the township line and Bayou Crocodile as public land. I have never heard of but one Crocodile Bayou in the neighborhood.

(Signed) WM. POLK.

THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

I, Charles M. Bradford, Second Justice of the Peace for the Parish of Orleans, duly elected, sworn, and commissioned, and acting as such, in and for the City of New Orleans, in the Parish of Orleans, in the State of Louisiana, do hereby certify and make known, that the foregoing deposition of William Polk, taken before me on the 20th day of January, A. D. eighteen hundred and fifty-eight, at the time and place designated; that the examinations, responses, and statement of said deponent were reduced to writing by me, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof, I, Charles M. Bradford, Second Justice of the Peace for the Parish of Orleans aforesaid, do hereby set my hand, at the City of New Orleans, in the State of Louisiana, this 20th day of January, A. D. eighteen hundred and fifty-eight.

Second Justice of the Peace for the Parish of Orleans.

Costs.—Commissioner's fees, $500, paid by defendants.

(Signed) CHARLES M. BRADFORD,
Second Justice of the Peace of the Parish of Orleans.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Document L. H.
No. 15.

(Introduced by Defendants.)

Testimony of Messrs. Bernard, under commission.

Filed October 7th, 1858.

THIRD JUDICIAL DISTRICT COURT,
Parish of St. Charles.

The State of Louisiana to Arthur Fortier, Esq., Justice of the Peace in Algiers, Parish of Orleans, greeting:

A. LANFEAR
vs.
R. N. CHAPMAN, ET ALS.

Know ye that we, reposing confidence in your prudence and fidelity, do by these presents give unto you authority, diligently to examine all witnesses whatever, as well on the part of the pl'ff as of the def't, in a certain suit now pending in the Third Judicial District Court in the Parish of St. Charles, wherein Ambrose Lanfear is plaintiff, and R. N. Chapman and others, are defendants.

Therefore, we desire you at a certain time and place by you to be appointed for the purpose, you cause the said witnesses to come

before you, and then and there to examine them apart, upon their respective corporal oaths first taken upon the Holy Evangelists, that you reduce their examinations in writing, and when you shall so have taken them, that you send the same, with this commission, closed up under your seal, to us in our Third Judicial District Court in the Parish of St. Charles, without delay.

Witness the Hon. Victor Burthe, Judge of our said Court, this third day of December, 1857, and in the eighty-second of the Independence of the United States.

[SEAL.] (Signed) C. ST. MARTIN, *Clerk*.

THIRD JUDICIAL DISTRICT COURT,
in and for the Parish of St. Charles.

A. LANFEAR vs. R. N. CHAPMAN, ET ALS. } Interrogatories to be propounded to J. B. Bernard, Sr., J. B. Bernard, Jr., witnesses for the defendants, residing in the Parish of Orleans.

1st. Were you acquainted, or not, with Paul Toups and Daspit St. Amand? If so, state when and how long you knew them, and what were your means of knowing them.

2d. Where were you born? What is your age? Have you ever lived in the Parish of St. Charles? and if so, how long? State the exact locality of your residence.

3d. Are you acquainted with Petit Bayou? If so, state its course, and its mouth. Is it a dry bayou, or a deep and wet one? Does any wild cane grow in it, or not? Is its bottom susceptible of cultivation, or not, at any points, in ordinary seasons?

3d. Are you acquainted with the locality of Bayou Crocodile? Do you know of more than one bayou of that name in the Parish of St. Charles? If so, state where they all lie. Where does this bayou commence, and where does it run? Does it run from one prairie to another, or from one end of the Coteau de France to the other.

4th. Have you ever heard the Bayou, which runs from one end to the Coteau de France, near the river, called Crocodile.

5th. Where was the vacherie of Paul Toups? Were you ever in the vacherie during his life? Where were his buildings, if he had any, on it? Did the vacherie of Toups cover the ground between Bayou Crocodile and the double concession of the lands on the river? Did you ever hear Toups claim this land, or speak of the boundaries of his claim?

6th. Where did the first road to the vacherie of Toups commence at the Mississippi river? Was it straight or crooked? Did he follow the windings of any Bayou, of any part of the way, or not?

7th. Can you tell whether this road had ever been measured, or not? Do you know what was the exact distance from the river to

2d Interrogatory. I was born in the Parish of St. Charles; I am between forty-six and forty-seven years of age; I have lived in the Parish of St. Charles. I lived there from my birth to the year 1836, when I left the parish; I lived about one mile from the residence of Daspit St. Amand; I lived on the plantation of Mr. Jean Louis Belsom.

In answer to the Interrogatories 3, 4, 5, 6, 7, 8, says: That he has heard the testimony of J. B. Bernard, Sr., the former witness, and that he fully corroborates the answer to said interrogatories.

9th Interrogatory. There was no road from the plantation of St. Amand to the Bayou Crocodile; it was open subsequently and ran partly on high lands and partly in swamp lands; in the swamp a ditch was made on both sides of the road and the dirt thrown up to make this road; I used to shoot ducks in the water on both sides of the road.

10th Interrogatory. I know nothing else that can be of any service to defendants.

(Signed) J. B. BERNARD, *fils.*

Sworn to and subscribed before me, this 29th day of April, 1858.

(Signed) ARTHUR FORTIER,
6th Justice of the Peace.

I, the undersigned 6th Justice of the Peace, in and for the Parish of Orleans, on the right bank of the river Mississippi, do hereby certify that the foregoing depositions of J. B. Bernard, Sr., and J. B. Bernard, Jr., were by me reduced to writing, from the dictations of the witnesses who have signed the same. (The former witness by making his mark thereto, as he knows not how to write, as he declares.) In faith whereof, I have hereunto set my hand at Algiers, Parish of Orleans, right bank of the river Mississippi, this 29th day of April, 1858.

(Signed) ARTHUR FORTIER,
6th Justice of the Peace.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.
Document L. H.
No. 16.
(Introduced by Defendant.)

Printed act of Congress, August 2d, 1856.
Filed October 7th, 1858.

Hereto annexed by consent of parties.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.
Order.
(Continued from page 11.)

When, after having testimony, evidence on file, and argument of Counsel, the Court took the same under advisement.

No. 310.

AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Order.

Agreement between parties.

Entered and filed October 8th, 1858.

No. 310.

AMBROSE LANFEAR *vs.* H. L. HUNLEY.
SAME *vs.* MARIONNEAUX.
SAME *vs.* CHAPMAN.
SAME *vs.* W. C. FISHER.
SAME *vs.* PUYSEGUR.
SAME *vs.* ST. AMAND.
SAME *vs.* EAGLESTON.
SAME *vs.* GALLAGHER.
SAME *vs.* L. BOUTTE.
AMBROSE LANFEAR *vs.* PETRO.
SAME *vs.* BELL.
SAME *vs.* FEE.

On joint motion of counsel for plaintiff and for defendant in the several cases,

It is hereby ordered, that the following agreement be entered on the minutes of this Court, to wit:

1*st*. The judgment rendered in the case first designated shall be taken and deemed to be judgment of the Court in all the other cases, that of "Fee" excepted, said Fee residing south of Bayou Crocodile, a separate judgment is respectfully asked in his case.

2*d*. When judgment shall have been duly rendered, the Court may proceed to sign the without waiting for any further delay, but the party cast shall be taken and deemed to have applied for a new trial, and said new trial refused.

3*d*. Any party to these suits shall have, until the expiration of the second day of the next regular term of the Court, to file a suspensive appeal.

4*th*. In case of such appeal, the first-named of these cases alone shall be taken up to the Supreme Court, and the final judgment therein shall be deemed to be the final judgment in all the other cases, that of "Fee" still excepted, in which a separate appeal shall be taken upon the statement of facts by the Court or the counsel.

(Signed) PIERRE SOULÉ,
For Himself and Hunley, of Counsel for Defendants.

(Signed) HANDLIN & ST. PAUL,
For Plaintiff.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Judgment.

(Entered on minutes of 14th October, 1858.)

Filed October 14th, 1858.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Third Judicial District Court, Parish of St. Charles.

JUDGMENT AND REASONS.

The difference between this case and that of Lanfear *vs.* The G. W. & O. R. R. Cy. and Long & als., which was decided by this Court in favor of the plaintiff, is in this fact, that the settlements of defendants in the former case were located on the south side of Bayou Crocodile, whilst that of the present defendant is on the north side of said Bayou.

A. Lanfear claims all that portion of land commencing at the back of his plantation, extending as far as Bayou des Cannes, and represented on the plan of McCulloh, Surv. Gen'l, as the claim of the children of Paul Toups and that of A. Daspit St. Amand. Pl'ff has succeeded, through sundry annoyances, to the rights of P. Toups and of St. Amand, whose claims were confirmed by Congress in 1812 and 1820.

In the judgment rendered by this Court in the case above referred to, the Court recognized the rights of Lanfear to all the land south of Bayou Crocodile, from the crossing of said bayou down to Bayou des Cannes. It is now necessary to examine whether the grant of Baron de Carondelet to Paul Toups extended north of Bayou Crocodile, where the present defendant has his settlement.

In his requete to Baron de Carondelet, Paul Toups states, "that owing to considerable losses on account of short crops, death of slaves, &c., he has become involved in debts which he cannot pay except by the sale of his plantation, which constitutes his sole means of supporting his family: wherefore he prays for a grant of land on the place called "Les Coteaux de France, at a distance of about eleven leagues from the capital, and about 3½ leagues from the river, on the other (right) bank, reaching to a Bayou named Crocodile, (arrivant à un Bayou nommè Crocodile,) which runs parallel with the river, and the said land to be taken from the crossing of said Bayou as far as the large swamp on the other side of Bayou des Cannes—the whole forming a strip of land about 16 or 18 arpents wide, and about two leagues and a half long, bounded on one side by floating prairies, and on the other by lakes and marshes."

Such is the description of the grant which Paul Toups wished to

obtain from the Spanish government. His requete defines clearly the starting point, as well as the limit of the grant. It commences at the crossing of Bayou Crocodile, and ends at the large swamp on the other side of Bayou des Cannes.

This case would, therefore, be free of all difficulties, if it was not argued by plaintiff that the Bayou Crocodile, referred to in the requete, is not the one referred to by Paul Toups, is the one which in the survey is called Petit Bayou.

In his report, Mr. J. W. McCulloh, Gen. Sur., says that Bayous Crocodile are known throughout Louisiana, and, says he, "it is proved in this case that the location of Toups covers three streams of that name."

We have not the benefit of such evidence. The plan on file shows but one bayou of that name, and there are several reasons for which we consider it as the one referred to by Paul Toups.

1st. It is the one which runs parallel with the Mississippi, with the exception of those designated on the plan by the names of Bayou des trois Fourches, Bayou Saut d'Ours, and Bayou des Cannes, all three of which are far south of Bayou Crocodile.

2d. It is on that very Bayou Crocodile that Daspit St. Amand, who had purchased from the heirs of Paul Toups, had built a bridge and erected a fence, making it himself the starting point of his *vacherie*.

3d. That portion of the Coteaux de France comprised between Bayous Crocodile and des Cannes is the only one that can answer the description in the requete and order of survey, as being bounded on one side by floating prairies, and on the other by lakes and marshes.

It is true that in confirming the grant of Paul Toups to the land comprised between Bayou Crocodile and Bayou aux Cannes, we cannot find the length, $2\frac{1}{2}$ leagues, called for by the requete and order of survey. But when the boundaries are so clearly defined we cannot disregard them, and give preference to distance and measurement in the location of a grant.

As to Petit Bayou being the one meant by Paul Toups as Bayou Crocodile, we consider as inadmissible. It does not run parallel with the river, but, on the contrary, runs at right angles with it.

Instead of being $3\frac{1}{2}$ leagues from the river, it is but little over 80 arpents from it. Moreover, the requete asks for land to be taken at the Coteaux de France, from the crossing of Bayou Crocodile, and we see that in no place does Petit Bayou cross the Coteaux de France, whilst Bayou Crocodile crosses it at the very point where St. Amand establishes his *vacherie*.

The confirmations by Congress, in 1812 and 1820, allowed no more to the children of Paul Toups and to Daspit St. Amand than had been granted by Baron de Carondelet, and the description of the grant in said confirmation is "of a tract of land, situate in the

County of Acadia, at the place called Les Coteaux de France, at about a distance of 3½ leagues from the western bank of the Mississippi.

This confirmation only recognizes the grant of the Spanish government, but gives no more land to the grantees.

The two confirmations of 1812 and 1820, upon which pl'ff bases his present claim, are but one and the same grant, as appears clearly from the description of said grant.

Upon the whole, after a careful examination of this case, we have been forced to the conclusion that the plaintiff, as successors of Paul Toups and of Daspit St. Amand, has *no title* to the land making part of the Coteaux de France, situate north of Bayou Crocodile, and upon which deft.—as acquired pre-emption rights. The confirmation of 1857 to Ambrose Lanfear contains an express reservation in favor of the settlers, authorizing them to test the validity of the surveys and the extent of the grant to Paul Toups and St. Amant, and there is an admission on record that H. L. Hunley had all the qualifications required by the United States to acquire under the pre-emption laws, and that the portion of land which he occupies is on the north side of Bayou Crocodile.

For the foregoing reasons, and the law and evidence being in favor of defendant, it is ordered, adjudged, and decreed, that there be judgment in favor of said Hunley, and that pl'ff's demand be dismissed with costs.

Parish of St. Charles, October 14th, 1858.

(Signed) VICTOR BURTHE,
Judge.

PETITION OF APPEAL.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Filed December 6th, 1858.

To the Honorable the Judge of the Third Judicial District Court in and for the Parish of St. Charles.

The Petition of Ambrose Lanfear, of New Orleans,
Respectfully represents,

That he is advised that there is error in a certain final judgment rendered by this Honorable Court, in the matter of A. Lanfear *vs.* H. L. Hunley, on the 14th day of October last.

Wherefore he prays to be allowed to file this petition of appeal, upon giving bond, &c., surety for costs, as the law requires.

And, as in duty bound.

(Signed) A. ROBERT,
H. ST. PAUL.

Service accepted on behalf of defendant by

(Signed) PIERRE SOULÉ,

For himself and H. L. Hunley.

ORDER.

Let an appeal be granted in this case, upon plaintiff giving bond and surety in the sum of two hundred and fifty dollars, as the law directs—said appeal to be returnable to the Supreme Court of this State on the 4th Monday of February next.

(Signed) VICTOR BURTHE,
Judge.

Parish of St. Charles, December 6th, 1858.

BOND OF APPEAL.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Filed December 6th, 1858.

Know all men by these presents, that we, Ambrose Lanfear, as principal, and Pierre Theodore Daron, as surety, both of this parish, are held and firmly bound unto H. L. Hunley, his executors, administrators, and assigns, in the sum of two hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and assigns, and, administrators, firmly by these presents.

Sealed with our seals, and dated in the Parish of St. Charles, on the sixth day of December, eighteen hundred and fifty-eight.

Whereas, the above-bound Ambrose Lanfear has this day filed a Petition of Appeal from a final judgment rendered against him in the suit No. 310 of Docket of this Court, (Third Judicial District Court in and for the Parish of St. Charles,) entitled "Ambrose Lanfear *vs.* H. L. Hunley," on the 14th October last past, 1858. Now the condition of the above obligation is such, that the above-bounden A. Lanfear shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said Pierre Theodore Daron, surety, be liable in his place.

(Signed) AMB'SE LANFEAR, [L. S.]
" P. T. DARON, [L. S.]

Signed in the presence of

(Signed) EMILLE TASTET,
N. ST. MARTIN.

No. 310.
AMBROSE LANFEAR
vs.
H. L. HUNLEY.

Third Judicial District Court.

Parish of St. Charles.

Agreement between parties. Filed January 4th, 1858.

The counsel for both parties in this suit do agree, that the Plan and the Documents, marked L. H. No. 6, L. H. No. 11, L. H. No. 12, introduced by plaintiff, and that those marked L. H. No. 12 and L. H. No. 16, introduced by defendant, be annexed in originals to the Transcript of Record to Supreme Court.

(Signed) H. L. HUNLEY,
Of Counsel for Defendant.

" HENRY ST. PAUL,
For Plaintiff.

CLERK'S CERTIFICATE.

State of Louisiana,
Parish of St. Charles.

I, the undersigned, Clerk of the Third Judicial District Court in and for the Parish of St. Charles, do hereby certify the foregoing hundred and fifty-seven pages contain a true and complete transcript of all the evidence, testimony, and documents filed and of record in the case wherein Ambrose Lanfear is plaintiff and H. L. Hunley is defendant, No. 310 of the Docket of this Court.

In testimony whereof, I have hereunto set my hand [SEAL.] and affixed the seal of the said Court, at the Parish of St. Charles, this day of January, 1859.

(Signed) C. ST. MARTIN, *Clerk.*

ENDORSEMENT OF TRANSCRIPT.

6045.

Ambrose Lanfear, Appellant, *vs.* H. L. Hunley, Appellee.

ST. PAUL, *for Appellant.*
SOULE, *for Appellee.*

Third Judicial District Court, Parish of St. Charles. No. 310.

6045 Supreme Court.

Filed February 5th, 1859.

(Signed) EUGÉNE LASERE, *Clerk.*

DOCUMENTS

Brought up in original in the Supreme Court.

Document L. H. No. 6, introduced by Plaintiff at p. 48.

Map of Townships 13 and 14.

[For Map, see original page]

TABLE OF CONTENTS.

PUBLIC LAND.

Sec. 119 contains 165.20 acres.

PRIVATE CLAIMS.

Sec.	CLAIMANTS' NAMES.	Report.			Area.
		Name.	Date.	Nos.	
88	Daniel Lambert	B P		51	36.82
89	Louis Friloux	" "		52	34.96
90	George Hinler	" "		122	109.73
91	Jean Arceneaux	" "		120	39.90
92	Tyfany Shaixnaitre	" "		133	41.96
93	Francois Mayrane	" "		240	70.52
96	Daniel Lambert	B R		D 2	0.79
120	The children of Paul Toups	O B	1812	74	276.52

Variation of the needle 7° 55′ East.

Maurice Hauké, D. S., under contract dated 19 Sept. 1854, and instructions of November 8th, 1853, and March 8th, 1855, re-surveyed in the 4th qr. of 1854 and 1st qr. of 1855, all the lines represented on the above diagram.

SURVEYOR-GENERAL'S OFFICE.
Donaldsonville, La., May 5th, 1855.

The above Diagram has been prepared from the approved field notes on file in this office, and is hereby approved.

(Signed) WM. J. McCULLOH,
Surveyor-General, La.

SOUTH-EASTERN DIST., LA.

TABLE OF CONTENTS.

Sec.	CLAIMANTS' NAMES.	Report.			Area.
		Name.	Date.	Nos.	
9	Daniel Lambert	R & R	1833	D 2	35.10
10	Louis & Wager Friloux	" "	"	C 121	34.79
11	George Tünclair	" "	1816	536	99.74
12	John Arceneaux	" "	"	517	53.94
13	J. Chaixnaitre	" "	"	541	84.96
14	John Lewis Wagespack	" "	"	538	104.60
15	Andres Wagespack	" "	"	539	105.48
16	John Marie Bordeville	" "	"	487	84.81
17	Joseph Wagespack	" "	"	542	247.96
50	Francois Mayronne	B P	"	240	468.01
51	Tifany Shaixnaitre	"	"	133	42.22
52	Jean Arceneaux	"	"	120	13.68
53	George Kinler	"	"	122	16.53
54	Louis Triloux	"	"	52	0.75
63	The heirs of George Kinler	R & R	1835	C 92	26.02

Variation of the needle 7° 55′ East.

Maurice Hauké, D. S., under contract dated 19 Sept., 1854, and instructions of November 8th, 1853, and March 8th, 1855, re-surveyed in the 4th qr. of 1854 and 1st qr. of 1855, all the lines represented on the above diagram.

SURVEYOR-GENERAL'S OFFICE,
Donaldsonville, La., May 8th, 1855.

The above Diagram has been prepared from the approved field notes on file in this office, and is hereby approved.

(Signed) WM. J. McCULLOH,
Surveyor-General, La.

SOUTH-EASTERN DIST., LA.

TABLE OF CONTENTS.

PUBLIC LAND.

Sec.	Area.	Sec.	Area.	Sec.	Area.	Sec.	Area.	Sec.	Area.
1	601.68	8	304.24	17	19.22	24	640.48	31	224.68
2	305.00	10	242.60	18	557.16	25	648.08	32	464.04
3	209.40	11	639.36	19	424.16	26	639.64	33	679.00
4	396.36	12	639.68	20	1.38	27	639.60	34	678.36
5	612.16	13	639.68	21	77.56	28	482.96	35	679.27
6	640 32	14	639.40	22	617.24	29	79.00	36	678.52
7	640 52	15	323.04	23	639.64	30	68.34		

Total Area of Public Land, 15,764.77 Acres.

PRIVATE CLAIMS.

Sec.	CLAIMANTS' NAMES.	REPORT.			Area.
		Name.	Date.	No.	
37	The children of Paul Toups	Old Board	1812	74	864.82
38	Daspit St. Amand } in conflict André Pizari }	Peg & Rev " "	1816 1833	516 B 41	2407.12
39	The children of Paul Toups } in conflict. Daspit St. Amand }	O B R & R	1812 1816	74 546	1690.46
40	Daspit St. Amand	"	"	"	853.83
41	The children of Paul Toups	O B	1812	74	60.19
42	André Pizari	R & R	1833	B 41	73 58
43	Antoine Diez	"	"	C 185	647.11
44	Charles J. B. Florian	Old Board Act of Con. A	1812 p. July	213 27,1824	318.32
45	André Pizari } in conflict. Daspit St. Amand }	R & R "	1833 1816	B 41 516	4.00
46	André Pizari	"	1833	B 41	80.41
47	André Pizari } in conflict. The children of Paul Toups }	" " " O B	" " " 1812	" " " 74	238.56
48	The children of Paul Toups } in conflict. Antoine Diez }	" " R & R	" " 1833	" " C 185	96.49

Total Area Public Land, 15,764.77 Acres. Private Claims, 7335.20. Township, 23,099.97 Acres.

Variation of the needle 7° 35′ East.

A. F. Righter, D. S., surveyed Section 44 in the 3d qr. of 1839, and was paid therefor in the 4th qr. of the same year. It is supposed that he also surveyed the North Boundary of the Township, but there are no field notes thereof on file, nor any evidence of payment for the same.

There is no evidence that any other old surveys have ever been made of this township.

Maurice Hauké, D. S., surveyed the entire Township in the 4th qr. of 1854 and 1st qr. of 1855, under contract dated September 19th, 1854, and instructions of November 8th, 1853, and March 8th, 1855.

All the public sections in this Township contain swamp lands, accruing to the State of Louisiana under the Act of Congress approved 28th Sept'r, 1850. See list herewith transmitted.

SURVEYOR-GENERAL'S OFFICE,
Donaldsonville, La., May 5, 1855.

The above Township Map has been examined, and compared with the approved field notes thereof on file in this office, found correct, and is hereby approved.

(Signed) WM. J. McCULLOH,
Surveyor-General, La.

DOCUMENT L. H. No. 11.

Printed Report of J. P. Benjamin, to the Senate of the United States.

Introduced by Plaintiff, at page 70.

34th Congress, 1st Session. } SENATE. { Rep. Com. No. 223.

In the Senate of the United States,

July 14th, 1856.—Ordered to be printed.

Mr. Benjamin made the following

REPORT.

(To accompany bill S. 377.)

The Committee on Private Land Claims, to which was referred the petition of Ambrose Lanfear, praying confirmation of a survey of a certain tract of land in Louisiana, have had the same under consideration, and submit the following report:

It appears that the heirs of Paul Toups filed their claim under a concession from the Baron de Carondelet, then the Governor of the Spanish Province of Louisiana, before the Commissioners to adjust private land claims in the territory of Orleans and District of Louisiana, and that said Commissioners reported the said claim for confirmation, which said report was communicated to the House of Representatives on the 9th day of January, 1812, and, in reference to the claim of the heirs of Paul Toups, say: (Am. State Pap., Public Lands, Vol. 2, p. 324.)

"No. 74. The children of Paul Toups claim a tract of land situated in the County of Acadia, at the place called *Les coteaux de France*, at about the distance of three and a half leagues from the Western bank of the Mississippi, containing eighteen arpents in front, and a depth of two leagues and a half. Paul Toups, the father of the claimants, obtained from the Baron de Carondelet a regular warrant of survey for this land in the year 1796, for the purpose of establishing a Vacherie; and, the conditions of the warrant of survey having been complied with on his part, confirmed."

That by the Act of Congress, approved April 12, 1814, this claim, among others, was confirmed.

It further appears that Daspit St. Amand filed his claims to lands by concession from the Baron de Carondelet, before the Commissioners appointed to adjust private land claims, under the act approved February 27, 1813, which said Commissioners, in their report, which was communicated to the Senate on the 20th day of January, 1817, (American State Papers, public lands, Vol. 3, page 225,) class said claim as number 529 of the first class,

which "comprehends such claims as stand confirmed by law," and in reference thereto say:

"No. 529. Daspit St. Amand claims a tract of land situated in the County of German Coast, about nine miles from the banks of the Mississippi, and forming a part of a high ridge, called *Les coteaux de France.* This tract fronts to a water course called Bayou Crocodile, and extends in depth to Bayou *Aux Cannes*, bounded on both sides by marshes, and containing 5,824 superficial arpents. This land is claimed by virtue of an order of survey, dated in the year 1796."

That by the act of Congress, approved May 11, 1820, this claim, among others, was confirmed.

The said Daspit St. Amand, about the year 1813, purchased all the interest of the heirs of Paul Toups, in and to their said claim No. 74.

The petitioner, in the year 1845, purchased from the estate of Daspit St. Amand, the two tracts of land covered by claims Nos. 74 and 529, as aforesaid.

In 1854 and 1855, the United States caused the said claims to be surveyed by Maurice Hawke, a United States Deputy Surveyor, which surveys were approved and confirmed, by W. J. McCulloh, Surveyor-General for the State of Louisiana, on the 5th day of May, 1855, as appears from a duly certified copy of the township map accompanying the papers.

On the 17th of July, 1855, the Commissioner of the General Land Office requested of the Surveyor-General of Louisiana to state the reasons upon which he had approved of the survey under said claim and certificate, No. 74, in the name of the children of Paul Toups, deceased.

Under date of the 1st September, 1855, the Surveyor-General gave his reasons for approving of the said survey, in a communication to the General Land Office, of which the following is a copy:

SURVEYOR-GENERAL'S OFFICE,
Donaldsonville, Louisiana, September 1, 1855.

Sir:—Pursuant to your instructions of the 17th of July, 1855, I now submit the reasons on which this office approved the contested location of "the children of Paul Toups, deceased." Certificate No. 74, of Robertson & Lewis, in Township 13 and 14, South, Range 20, East, South-eastern district, west of the Mississippi river.

The documentary evidence in the case consists of:

1st. Requete of Paul Toups, addressed to Carondolet.
2d. Order of survey by Carondolet.
3d. Application of 31st of December, 1806, by Toups' children,

to the Commissioners of the Eastern District, for a confirmation of the inchoate title.

4th. Certificate of confirmation by Commissioners.

5th. Commissioners report on the claim.

Copies of the requete and order were transmitted to the departments, with my letter of May 5, 1855. The application of the children of Toups is so similar to the report of the claim, as published in the State papers, that a copy of it is unnecessary. The certificate of confirmation is the only muniment of title binding this office in locating the claim; it is *literally* as follows:

"The children of Paul Toups, deceased, are entitled to a *patent* for a tract of land situate in the County of Acadia, at the place called Les coteaux de France, at the distance of three and a half leagues from the western bank of the Mississippi, having eighteen arpents front, and two and a half leagues in depth, the same being claimed by virtue of an order of survey issued in the year 1776, and having been inhabited and cultivated on the first day of October, 1800.

T. B. ROBERTSON,
JOSHUA LEWIS, } Commissioners, &c.

New Orleans, Dec. 31, 1811."

The recent location of the claim, thus confirmed, was approved under the belief that the certificate, in the absence of fraud or error, precluded a departure from the dimensions prescribed by it, for the fourth section of the act of March 3, 1807, under which it was issued, makes it final against the government, "any act of Congress to the contrary notwithstanding." That section imposes upon the Commissioners an observance of French and Spanish laws and customs in issuing their final certificates, thus implying that certificates contrary to those authorities should not be final against the United States. It might be argued that this restriction devolves on this office the duty of comparing the certificate in question with those laws and customs, and of construing it accordingly; but on the legality of the Commissioners' acts, and to determine the intricate and embarrassing question of conformity or non-conformity with colonial precedents. In case of a certificate manifestly violating this provision, the office might refuse to carry it out without special instructions on the subject; but in the case of Toups, no such difficulty exists, and the only question has therefore been, how shall the terms of the certificate be enforced? This involved the preliminary inquiry as to the point on the *Coteau*, whence the depth of two and a half leagues, specified in the certificate, should be computed. That the *Coteau de France*, now traversed by the New Orleans and Opelousas Railroad, was the locality meant, has never been a subject of doubt with the office. It appeared to be a fact at first glance, and a review of the case

affords no grounds for questioning it. A beginning point for the location being thus the first consideration, it became necessary to examine evidence *dehors* the certificate. In that instrument, the doubt originating, the inquiry is a latent one, and hence a recourse to other evidence was not deemed inconsistent with the conviction that the certificate was, under the circumstances, an estoppel, as to ministerial and executive officers.

Toups petitioned for land extending from a great marsh beyond the Bayou Aux Cannes to *Bayou Crocodile.* But much doubt exists as to the bayou meant in his requete, under the latter name, though none has been suggested as to the position of this *marsh.* On it the *Coteau* ends. The marsh itself is almost impenetrable and has long been known as *le grand Marias.* The office, then, regarding this as a reliable basis of operations, authorized the extension of the claim, thence two and a half leagues, up the *Coteau* towards the Mississippi river, and approved the location accordingly. Two and a half leagues by eighteen arpents, the dimensions prescribed by the certificate, gave an area of 3,163.40 acres. Hawké's location, as approved, observing the width of eighteen arpents, gives an area of 3,227.34 acres, being an excess of only 63.94 acres. This inconsiderable discrepancy, in a claim so large and so vaguely defined, indicates the general accuracy of the location, and the fidelity with which the depth required has been adhered to. But it is said by squatters in Township 14 south, Range 20 east, that the Bayou Crocodile, meant by the *requete,* is that which bound Daspit St. Amand on the north-east, and that the contested claim should not extend further north than its southern bank. In weighing this objection, little consideration is due to the right, actual or alleged, of the squatters urging it. Some of them are precluded from the right of protesting, by the fact that they have squatted out of the claim; others by the fact that they squatted on the claim after its location, with full knowledge that they were trespassers, and all appear to be mere adventurers, recently attracted to the country by the facilities for speculation, more or less laudable, afforded by the great highway now intersecting the region, and pretending for their improvements neither antiquity or settlement nor pecuniary value. The fact, however, thus urged, is intrinsically important, and as such worthy of examination, independently of the precarious and dubious rights of those pleading it.

It is admitted by the parties interested in maintaining the location, that the cattle formerly kept in the *Vacherie,* by Toups and his successors, were limited in this range to the southern bank of the bank of the Bayou Crocodile, contended for by the squatters, and that a bridge formerly crossed it, defended by bars to prevent the escape of the cattle. Hawké reports an old *Vacherie* bridge at the same point, with the old vacherie road leading over it, and the bayou appears parallel to the Mississippi river. These circum-

stances all coincide with those mentioned in the requete; but that document, though calling for the south bank of "Bayou Crocodile" as the northern limit of the land petitioned for, asks for a depth of *two and a half leagues*, whereas a depth from "le grand marais" to the bridge is only about *one and a half* leagues.

Were the call for Bayou Crocodile free from ambiguity, it would supersede those for area or numerical depth, on the general rule that calls for course, distance, and quantity, are subsidiary to calls for natural objects. But, is the *reason* of this rule applicable to the present case? The object of evidence is the attainment of the greatest possible degree of certainty; and in view of this motive, the existence of natural boundaries, being *facts* palpable to all men, and but little liable to misconception, such boundaries, in competition with imaginary lines, are justly entitled to the preference; for the latter are inherently liable to misconstruction, have no physical representation on the ground, and even when defined there, by lines and corners, are still liable to obliteration and change. Unfortunately, however, the fact of the Toups' claim forbid the attainment of certainty, through any rule of interpretation. Bayous Crocodile are known throughout Louisiana; and it is proved in this case, that the location of Toups covers *three* streams of that name—the bayou crossed by the Vacherie bridge, the bayou which traverses and forms the *Coteau*, and a little bayou running *parallel to the Mississippi river*, and emptying into the second one now mentioned, about twelve chains above the intersection of the latter by the north boundary of Township 14. It is this latent ambiguity in the term *Bayou Crocodile*, as occurring in the *requete*, which defeats the application of the general rule of evidence above, and has therefore induced the office to prefer the numerical call for depth, as affording, in the peculiar difficulties of the case, a greater probability of correctness than is afforded by the call for the Bayou Crocodile.

The depth assigned by the certificate is equal to 606.05 chains; that obtained by the approved location is 642.90 chains, adopting as the test the lineal distances given in the S. E. lines of the claim, a mode of measurement adopted by the deputy, with the previous approbation of the office. The location thus manifests an excess in depth of 35.85 chains; and it is a singular coincidence at least, that this distance deducted from the north end of the claim, by a line parallel to the banks of the 80 arpents tracts, fronting on the Mississippi river, Township 13 south, Ranges 20 and 21 east, would make the end line cross the bayou forming the *Coteau* at the mouth of the *third Bayou Crocodile*, above-mentioned.

A location reaching the rear lines of the 80 arpents tracts has been approved, because the claimants have thus held the land for many years, (as will fully appear from the testimony transmitted to the commissioner on 5th May last,) and because such location gives a quantity more in accordance with that resulting from the certifi-

cate, than would be obtained by the depth, if limited to third Bayou Crocodile, above.

I have, as required, recalled the map of Township 14 south, Range 20 east, and diagram of Township 13 south, Range 20 east, from the Register at New Orleans, and shall detain them until your decision be communicated to me.

Respectfully, your obedient servant,

WILLIAM J. McCULLOH,
Surveyor-General, Louisiana.

HON. THOS. A. HENDRICKS,
Commissioner-General, Land Office,
Washington City, D. C.

SURVEYOR-GENERAL'S OFFICE,
Donaldsonville, Louisiana, June 9, 1856.

I certify the foregoing, with the interlineations on pages 5 and 8, to be a true copy of the original, recorded in this office.

WILLIAM J. McCULLOH,
Surveyor-General, Louisiana.

Aside from such surveys, the petitioner, and those under whom he claims, has been in uninterrupted possession of the said land for upwards of sixty years; one of the claims has been confirmed over forty years, and the other over thirty-five years.

Notwithstanding the fact of such possession, together with the survey regularly made out and regularly approved, the General Land Office has instructed the Surveyor-General to cause the aforesaid survey to be obliterated, and all that part of the Toups' claim north of Bayou Crocodile to be surveyed as public lands.

Your committee are of opinion that the survey of the Toups' claim was made in accordance with the concession and the rules and orders of the Spanish Government; they, therefore, cannot agree that the claimant shall be deprived of his lands, over which he has exercised ownership for so long a period of time.

From every consideration of justice and right, the committee believe that the claimant is entitled to the said lands as surveyed and approved of by the Surveyor-General on the fifth day of May, 1855; they, therefore, report a bill confirming the said survey of the "Toups'" claim, No. 74, as also the survey of the "St. Amand" claim, No. 529, and respectfully recommend its passage.

(Endorsed.)
Offered by p'lff. Doc. L. H., No. 11. Filed, Oct. 7th, 1858.
(Signed) C. ST. MARTIN, *Clerk.*

DOCUMENT L. H. No. 12.

Printed Memorial of Ambrose Lanfear.

Introduced by plaintiff at page 70.

On the conflicting claims of certain squatters in Township XIV., S. Ran., 20 E. W. of Mississippi river, and Ambrose Lanfear, assignee of Paul Toups.

To the Honorable the Secretary of the Interior, the Attorney-General, and the Commissioner of the General Land office of the United States.

The undersigned, Ambrose Lanfear, of New Orleans, most respectfully presents the following memorial:

On the 21st day of November, 1795, Paul Toups, a resident of the Parish of St. Charles, right bank, made the following application to the Baron de Carondelet, Governor-General of the Province of Louisiana:

Paul Toups, an habitant of the German Coast, Parish of St. Charles, represents, that having for the last three years met with considerable losses on account of short crops and death of slaves, he has become greatly involved in debt, which he cannot pay, except by the sale of his plantation, which constitutes his sole means of supporting his family. Wherefore, he respectfully prays your Excellency to concede to him a certain land, depending from the domain of his Majesty, in order to establish thereon a stock farm; which land, situated at the place named "Les Coteaux de France," (the hills of France,) at a distance of about *eleven leagues* from the capital, and about *three and half leagues* from the river, on the other bank, reaching to a bayou named "Crocodile," which runs parallel with the river, and the said land to be taken from the crossing of said bayou as far as the large swamp on the other side of Bayou des Cannes; the whole forming a strip or tongue of land about *sixteen or eighteen arpens* wide on an average, and about *two leagues and a half* long, bounded on one side by floating prairies, and on the other by lakes and swamps.

Which favor will be gratefully received, &c.,

PAUL TOUPS.

On this, the following order was entered; New Orleans, March 12th, 1796.

The Surveyor-General of this Province, or any deputy appointed to that effect, will lay out the portion of land demanded on a tongue (strip) of land of a mean width of 18 arpents, and a depth of two leagues and a half, provided, the same is as herein alleged, bounded by swamps, floating prairies, and lagoons, and further, on condition that it will cause no prejudice to any one, &c.

EL BARON DE CARONDELET.

In 1812 (American State papers, V. 2, p. 322, No. 74) this claim was confirmed in the following words:

The children of Paul Toups claim a tract of land, situate in the County of Acadia, at the place called "Les Coteaux de France," at about a distance of three and a half leagues from the western bank of the Mississippi, containing 18 arpents in front, and a depth of two leagues and a half. Paul Toups, the father of the claimants, obtained from the Baron de Carondelet, a regular warrant of survey for this land, in 1796, for the purpose of establishing a vacherie, and the condition of the warrant having been complied with on his part, confirmed.

Ever since that time, as far back as the memory of any living man, Paul Toups and his successor, Antoine D. St. Amand, have used the whole of that ridge (so far, at least, as the want of the front plantation required it) in cutting their lumber and fire wood, on the first part, and leaving the portion beyond Bayou Saut D'Ours, as a vacherie for the purpose of keeping their cattle from running astray.

Paul Toups, at the time he made this application to Baron Carondelet, was residing on the river, and immediately in front of this ridge, (see act marked , and affidavit ,) and, therefore, must be presumed to have been fully acquainted with the lands in rear of his place. Now, by an examination of the field notes of the U. S. Deputy Surveyor, it will be seen that the ridge, or slight elevation of ground to which we lay claim, commences precisely within about 80 arpents from the river, and about 8 leagues (24 miles) from New Orleans; that following up said ridge from its starting point as far as the large swamp, said to be its rear boundary, a further distance of about 8 miles is found, which being added to the eighty arpents (3 miles) between the river and the commencement of the ridge, in Township 13, makes precisely 32 miles, or about eleven leagues from the city. So much for the proper location of the grant on the eastern bank of the Bayou des Allemands.

Now, for its extent: By reference to a survey of Mr. Hawke, the width of that strip of ground meandering so as to include the high land on both banks of the "Petit Bayou" is about 53 chains, which gives about 3,450 feet, or 18 arpents of 192 feet; its length is 640 chains, giving about 42,240, or 221 arpents, equal to two and a half leagues.

This is precisely what is granted by Carondelet, and what is confirmed by Congress.

If, now, we were to seek (as is pretended we should) this same extent of land on the bank of what is represented as Bayou Crocodile in the survey, how could such a measure be found there? This bayou, which is represented as crossing the ridge at almost right angles, is not more than 16 arpents long, and far from running parallel for that short distance with the Mississippi, does not afford

room to locate on its bank a tract of two a half leagues long by eighteen arpents wide.

Is it not, therefore, more probable to suppose that the bayou, named on the plan "Petit Bayou," is that which was meant by Paul Toups when he applied for a land suitable to raise cattle, and that in the many changes which took place, and the ignorance in which the then front proprietors were of the wilderness in rear of them, Paul Toups, himself, gave to the largest, longest, and most important stream the name of Bayou Crocodile, instead of that of "Petit Bayou," which is not in relative proportion to the petty dry bayou now termed Crocodile? It must be borne in mind that this name "Crocodile" is one of the most common in Louisiana, and that no parish is without a like bayou, from the innumerable number of alligators then swarming in every lake, river, or swamp. Further, "Petit Bayou" is almost parallel with the main stream of the Mississippi.

This interpretation is strengthened by the fact that, in the field notes of the Deputy-Surveyor, now in possession of the Land Office, as well as by his affidavit annexed hereto, the said Surveyor says, that some of the oldest residents stated to him that, in former times, both bayous were known by the same name of "Bayou Crocodile," and that it is only latterly that a difference was made between them. (See affidavit of M. Hawke in appendix.)

And, further, when this Board will come to examine the evidence furnished in a certain case, when this question was raised between the signer of the present protest and the undersigned, it will become clear that, at this very moment, it would be impossible to any geographer to ascertain the proper location of either "Petit Bayou or Bayou Crocodile," which, according to some, runs parallel to, and, according to others, at direct right angles with the Mississippi river, the whole of which is termed by the learned Judge, whose opinions will hereafter be given in full, "a mass of contradictions."

(See in appendix, evidence and judgment, in the case of "A. Lanfear, J. G. Long, and others.)

And it is to be remarked, that all those witnesses at last confess having acquired their knowledge of places and distances only since the running of the railroad track, not two years since.

When a country has so long remained unexplored as the swamps of Louisiana, when from the frequent droughts, streams, and other independent collections of waters were completely drained up, and when no geographer or scientific observer has ever attempted to describe a section of country, up to the present time considered altogether uninhabitable, is it not more reasonable to adopt that construction of a grant which will give it effect, than that which will absolutely defeat it?

Up to the time the New Orleans, Opelousas, and Great Western Railroad opened an access through the, theretofore, impassable swamps, extending in rear of the plantations which exists between New Orleans and Bayou Lafourche, no hunter, sportsman, or other adventurous leather-stocking had ever rambled through that deep wilderness: those whom the love of the chase impelled in these pathless woods, reached them from the front plantation, then partly owned by Paul Toups, and following up the banks of Petit Bayou, in is meanders through the swamps, reached the bank of the Bayou des Allemands, where game and fifth of every description afforded them amusement or food, the only track known, up to the laying of the railroad, and the clearing incident on it was that commencing on Paul Toups' plantation, and the distance calculated from the city was not the nearly direct line now traveled over by the railroad, but simply on the banks of the river, as far as Paul Toups, and then, through his land to the ridge, a distance we have already proven to be that given in the requête and warrant of survey.

Now, for any one acquainted with the early history of Louisiana, and familiar with the facility with which grants were made to actual settlers and long-established planters, does it not appear strange that Paul Toups should have applied for a tract of land, upwards of four miles distant from the rear of his own farm, when no other grantee was already settled adjoining him in that direction?

Yet it is said that his claim is not to commence immediately in rear of his front tract of 80 arpents or thereabout, but only at the crossing branches, called "Bayou Crocodile," in the survey, thereby leaving between his said original tract and his new grant a vacant space of three miles of the most valuable land, either for cultivation or the raising of cattle and stock.

We are well aware of the object which the former governments had in view in their American possessions: it was the creation of a compact body of colonists, whom their close proximity to one another would better enable to receive and obey the mandates of the mother country, and mutually give or receive that offensive and defensive assistance which the savage nations, then surrounding them, could call into action at every instant.

This object is made apparent by their laws and ordinances, a great portion of which we will now proceed either to quote or refer to, and which will show that it was required that villages or boroughs should be established, where the settlers should be lodged, so as to have a place of refuge and rest, within the shortest possible distance from their plantations, which were recommended to be contiguous to the village itself.

And these quotations will even show that it was not in the power of the Governor to grant to Paul Toups (had even the latter de-

manded it) a tract of land disconnected with the already existing plantations, without clearly and palpably violating the most explicit directions of his government, by leaving a vacant space of good arable land, between the front and rear tract of the applicant. The 9th article of "Morales' regulations for concession of lands," which is the codification of the several laws and usages in force in his time, expressly enacts: "That, as much as possible, and when the local situation will permit, *no interval shall be left between concessions*, because it is very advantageous that the establishments touch one another, as much for the inhabitants who can lend each other mutual support, as for the more easy administration of justice, and the observance of the rules of police, indispensable in all places, but more especially in new establishments. (See Land Laws, vol. 2, p. 211.)

Now, as the only exceptions to a law must be found in the law itself, the following article, (12th,) shows what causes shall prevent or authorize compliance with the preceding directions, and those causes must depend altogether upon natural obstacles.

"If, notwithstanding what is before written, marshy lands or other causes *shall make it necessary to leave a vacant space*, then the Commandants and Syndies shall take care, &c. &c."

By reference to the plot of the land, it will be seen that so far as there being between the rear part of the plantation of Paul Toups and the point where it is contended the grant should commence, any marshes or other natural obstacles rendering the land unfit for cultivation, the ridge there reaches its highest elevation, over the surrounding lands, and slopes gradually down as it runs further from the river and towards the Bayou des Allemands.

How could Paul Toups, then, have applied for, and the Governor granted him, a piece of land, purporting to be in the rear of the applicant, and yet, divided from it by nearly four miles of more valuable and contiguous ground? Such an absurd conclusion can only be drawn by parties blinded by their own personal interest, like the squatters whose protest, unsupported by facts or evidence, is now under consideration before this enlightened bureau.

For an interpretation of the above doctrines, the undersigned begs leave to refer to the numerous decisions rendered by the Land Office, and reported in the 2d vol. of "Public Land Laws," as well as to the act of Congress, approved June 15th, 1832, authorizing planters in Louisiana to enter lands "adjacent to and back of their own tracts," an act which had for its object to continue to actual settlers the same privileges they enjoyed under their former governments.

The following extracts from the Spanish land laws and regulations are also respectfully referred to:

No. 7. The Superintendent will be at liberty to locate the houses either contiguous to each other or to the farm which

shall be assigned to each settler, in order that he may reside near said farm. (Vol. 2, p. 105. Vol 2, p. 106, Nos. 11, 12; vol. 2, No. 27.) "The settlers speaking the same language shall be placed together."

Also, p. 116, No. 3, and p. 117, No. 9; each settler shall be allowed, *at the extremity of his lot and contiguous thereto*, fifty fanegas of land as pasture.

Same page, No. 117. No. 12.
Same page, No. 125. No. 17.
Same page, No. 125. No. 25.

The 11th article of Morales' Regulations comes back again in article 27th, where, speaking no longer of grants, but of actual sales, it is urged, that "care be taken to observe in the said sales that which is recommended in the 11th article, seeing the advantages and utility which result from consolidating the establishments always when it is practicable."

This embodyment of spirit of past legislation is found likewise in article 18th of Gayoso, which reads thus:

"*It shall not be permitted* to any new settler to form an establishment at a distance from other settlers: the grants of land *must* be made so as not to leave pieces of vacant ground between one another."

It is almost deemed useless to refer to the 3d article of the Treaty of Cession of 1803, which provides that "they (the inhabitants of the ceded territories) shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

After having proven that, under the Spanish land laws, no disconnected grant could be made, and repeating again that the location sought to be imposed on this grant is impossible, for want of room to place it on the banks of the dry bayou, miscalled on the returned map "Bayou Crocodile," the same losing itself in the floating prairies after a course of hardly one mile, the undersigned will invoke the principle that, whatever description (erroneous or not) might have been given by Paul Toups in his petition, the same does not govern the grant, and that it is only the decree which may be invoked as a title. From that alone we must seek to deduce inference, as to the extent of the concession.

Now, the decree (or warrant of survey) gives no further description than "a strip or tongue of land, two leagues and a half long by eighteen arpents wide, bounded by floating prairies and swamps." Not a word is there said about Bayou Crocodile, or any other: in fact, it is, as in the case of Fremont, lately decided, a claim almost undefined, and which can only be located according to the possession held by the grantee.

The confirmation by the Commissioners, binding on the United States, is also of the same description, adding, however, the name

"Coteaux de France," and repeating the same words "two and a-half leagues long by eighteen arpents wide;" so that, even considered in the light of a donation by the United States, they cannot, "*in foro conscienciæ*," reduce it by more than one-half: for, if we take the dry "Bayou Crocodile" as a starting-point, the claim—instead of being two and a half leagues, or eight miles, long—would hardly be five miles in depth, and by reason of the narrowness of the banks of said bayou would be very far from having eighteen arpents wide, in an average.

Yet, the United States have often proclaimed the principle, that if a grant be once confirmed under a certain measure, and the original plan gives more land than the confirmation calls for, the plan shall govern. (See Land Laws, vol. 2.)

The undersigned, therefore, respectfully urges, that neither the Spanish nor the American government could in equity curtail their former liberality, with the mere view of throwing in the mass of public lands about two sections, one-half almost of which would revert to the State of Louisiana, under the donations made by Congress.

But to show the absurdity of seeking to limit this grant to the "Bayou Crocodile," the undersigned urges that, to be consistent, the location should then follow up that stream, (if stream it may be called,) and then, instead of running two leagues and a half towards the "Grand Marais," which is situate on the S. W., it should follow a S. E. course for about one mile, (the eighth part of the grant,) and at once lose itself in the floating prairies! Can such an interpretation be given to this donation?

Further—The sole description given of the grant in the order or warrant of survey is, to lay out the portion of land demanded (*estu parte*) on a strip of land (*lingua de tierra*) of an average or mean width of eighteen arpents, and on a depth of two leagues and a half, "provided the same be bounded by swamps, prairies, and lagoons."

Let us see if such a description can apply to any other than the present location.

If there be any difference of opinion as to what was then called "Bayou Crocodile," the case is not the same with the other points named in the request, to wit: "Bayou des Cannes" and "Le Grand Marais" or "the large swamp," situate on the other side of "Bayou des Cannes."

Thus, as it is precisely indifferent to count from one or the other point, the doubt existing in regard to "Bayou Crocodile" must compel us to commence counting from the point not contested, namely, from the "Grand Marais."

And this mode, besides being the only safe one, on account of what precedes, seems also to be that adopted by the "requête" on which the Spanish warrant of survey was issued, since this "re-

quête" states the land prayed for to be situated "eleven leagues from the City of New Orleans, (about 32 miles,) the very distance which has already been proven to be that of the old road by the river, and, within one mile, that now run over by the New Orleans, Opelousas, and Great Western Railroad, as results from the evidence offered by the very signers of the protest, in a case to which allusion shall be shortly made.

The words in which this grant is confirmed by Congress must not be forgotten: "the place called '*Les Coteaux de France*,' at about a distance of three and a half leagues from the western bank of the Mississippi, containing 18 arpents front and a depth of two and a half leagues.

This conformation clearly locates the starting-point at three and a half leagues from the western bank of the Mississippi: it cannot, therefore, be from the crossing branches now called "Bayou Crocodile," which are only 6 miles or 2 leagues from the river, but, on the contrary, either the "Grand Marais" or "Bayou des Allemands," which are both about that distance.

Therefore, if instead of measuring the tract from the river on the N. E. towards the Bayou des Allemands, or the S. W., the same measure be taken from the S. W. running N. E., we find that the land required ($2\frac{1}{2}$ leagues or about 8 miles) will attain to within 80 arpents from the Mississippi, or, as laid on the plot, extending about 102 chains on the N. W. side, and 26.56 chains on the S. E. side, into Township XIII., R. 20; whilst, if limited to the pretended "Dry Bayou Crocodile," its extent will hardly be five miles from the "Grand Marais."

If we now seek some reasonable explanation of the words—"this land to be taken from the crossing of said bayou," we find it in the fact that Paul Toups resided on the river, and on the plantation immediately above that marked on the survey "No. 9, Daniel Lambert;" that, from said plan, it appears that the high land on the left, or western bank of the "Petit Bayou," does not commence before the base line of Township 13, whilst on the right, or eastern bank, not only does the high land commence much nearer the river, but throughout the whole length of the ridge continues much wider than on the other side.

Now, the "Petit Bayou" takes its source within less than 30 arpents from the river, through several branches, which finally unite into one and seek their level towards the "Grand Marais." Two of these branches divide the right bank of said bayou from the land where formerly Paul Toups lived: so that, in order to reach the portion of the banks of "Petit Bayou," most favorable for driving his cattle, he had to cross these two branches and, therefore, called them "*Latraverse*," or the crossing of the bayou.

Again; as his object was to establish a stock farm, and as in those days the expenses of fencing would have been enormous from

the want of hands, he must be supposed to have located his grasing farm in such a manner as to keep his cattle from running astray and reaching the front plantation; to do which, he must have chosen the eastern instead of the western bank, so that his cattle, when on the other side of the dry bayou called "Crocodile," was safely enclosed in front by "Petit Bayou," in rear by floating prairies, on the left by Bayou Saut D'Ours, and on the right by Bayou Crocodile.

Further than this, the order says that the land is granted, "provided the land surrounding the same (*las tierras que lindan*) be floating prairies or swamps."

Supposing the impossible case of this land being located on the so called "Bayou Crocodile," would such a grant answer the condition of being surrounded by swamps? A glance at the map will be a sufficient answer, for it will be perceived that on two sides, at least, E. and W., there extends a ridge of high and cultivable land, which is precisely that now claimed and under consideration.

True it is, that settlers, tempted and allured by the running of the R. R. track, have protested, and that their protest must be heard. But who are those settlers? men from the neighborhood, acquainted from infancy with the localities, the inhabitants, and the language of that district, exclusively composed of French decendents? No. They are men who had not lived there six months when the survey was made; they had never before in their life visited the spot they now claim to know better than the oldest residents, who, if they had thought that these lands belonged to the public domain, would have long since settled on them: They are men who, ignorant of the French language, are not even able to converse with the old Creoles who were born on the very soil now in dispute.

And what are the interested assertions of these persons, when put opposite to those which have been placed before this office? All, emanating from citizens of the highest respectability, born on this very land, and supported, amongst others, by the affidavit of the venerable General J. B. Plauché, the former Lieutenant-Governor of our State, and companion in arms of the Hero of Chalmette!

Well did these considerations weigh with the impartial and intelligent Surveyor-General of Louisiana, Wm. J. McCulloh, Esq., who had to decide upon this location, and he, being able better to judge and appreciate the respective worth and interested views of the witnesses, at once decided in favor of the present location.

But his decision, strong and conclusive as it is, does not stand alone, and the undersigned has now the benefit of a full and complete investigation before a competent tribunal, the Third Judicial District Court of Louisiana, presided by Judge Burthe, the son of one of the most highly esteemed French colonists, who first hailed the advent of the American government in Louisiana.

A few months before the survey complained of was even ordered

to be made, the undersigned brought an ejectment suit against one J. G. Long, and many others, for trespass on those same lands.

The very men, whose names appear as signers of the protest, had thus the full benefit of their own evidence and yet, independently of the authority of the survey made subsequently to the institution of this suit, and on the very testimony of the friends, associates, and confederates of the defendants, Judge Burthe decided that no other location than the present one could ever have been made: that the circumstances accompanying the grant, and the Spanish laws under which it was made, excluded any other interpretation.

Yet the counsel of the undersigned allowed defendants full and free scope to introduce even the most irrelevant and interested evidence. He afforded them every facility to prove the alleged corruption and bribery of the surveyor, but all to no purpose; they could not even make a show of resistance.

Now, what is the irresistible conclusion to which this board must arrive after two tribunals so well placed for judging the circumstances of the case, have decided in favor of the present claimant?

The answer is plain: That both the Surveyor-General of Louisiana and the 3d Judicial District Judge have been bribed, or that their decision, after full and complete investigation, is correct, and cannot be revised by the General Land Office, which, placed as is it, at a distance from the place of litigation, has before it to outweigh these impartial and fair trials, the unsupported allegations of the interested parties alone.

However, it having been decided by the heads of the General Land Office that this survey should be suspended, in order to ascertain whether the location thereon of Paul Toups' claim was correctly laid down, the undersigned cannot decline appearing in defence of his rights, although it does at the first blush appear rather strange, and the undersigned now begs leave to state that it is without a precedent in the annals of our land department, that the act of those officers, on whom by law devolves the duty of separating the public from the private domain, should be called into question at the request of parties whose rights can only attach from the moment that that separation is made; in other words, that the action of the proper officers of the government, in the legitimate exercise of a constitutional duty, may be controlled and directed by private individuals.

In order to facilitate this board in the investigation of the present controversy, the undersigned has caused all the documents referred to to be printed in the following appendix, and he now most respectfully submits the whole to your consideration.

AMBROSE LANFEAR.

HENRY ST. PAUL, *of Counsel.*

APPENDIX.

STATE OF LOUISIANA: PARISH OF ST. CHARLES.

Third Judicial District Court. Judgment.

No. 195.

I, the undersigned clerk, do hereby certify that, on the sixth day of August, eighteen hundred and fifty-five, judgment was rendered in the suit of Ambrose Lanfear and Wm. Polk vs. The New Orleans and Opelousas R. R. Co., and Long and others, in the words and figures following, to wit:

This suit was commenced in the form of an action of trespass. The plaintiffs allege that they are the owners of certain property described in their petition. That sundry individuals have taken possession of said property, have settled or squatted thereon, felling trees, cutting timber to the great damage of petitioners; they pray for writs of injunction and sequestration, and for judgment enjoining forever the said parties from trespassing on their land.

After the issuing of said writs, J. G. Long, J. H. Harper, O. B. Keithly, J. Keifer, A. Perring, G. A. Ingram, J. Hanley, G. Weinman, H. Burkley, L. Chamber, T. Harper, and Mrs. Robert Johnson, made themselves parties to the suit, by filing their answer in Court.

In their answer, defendants deny the allegations contained in plaintiffs' petition, and pray that said plaintiffs be held to strict proof of their allegations.

Upon such pleadings, the parties having come for trial before this Court, and plaintiffs having shown an unbroken chain of title from 1796 to the present time, a confirmation by Congress of the original grant to Paul Toups by the Spanish Government, a plot of survey made by the United States Surveyor, and considering that defendants set up no title, but merely ask for strict proof of plaintiffs' allegations, it would be easy to decide the case as presented by said pleadings.

But this would only give rise to further litigation, and the Court will examine the case as presented at the trial, the issue being quite different from that which is shown by the record.

The defendants, on the trial, contended that the land upon which they located their settlements is part of the public domain. That it forms no part of the concession made to the former grantee, Paul Toups; and that they, defendants, have acquired pre-emption rights to the same.

Before examining this question, our attention is drawn to several peremptory exceptions filed by the defendants, and in which they plead want of jurisdiction of this Court, want of proper parties to this suit, the United States District Attorney not having been made party to it. Prescription and want of notice.

These exceptions are filed under the erroneous impression that the United States have an interest in this case, and in fact the whole defence is based upon that supposition. But the record shows that the grant by Baron de Carondelet to Paul Toups has been duly confirmed in 1812. From that time, the United States, having divested themselves of all rights to that land, have no interest therein, and we cannot perceive why they should be made parties to a suit in which they claim nothing, and nothing is asked from them.

As to the want of notice, we are at a loss to know what notice defendants allude to, unless it be the notice referred to in one of their bills of exceptions, and relative to the survey made by order of the United States, which the counsel for defendants contend could not legally be made, without notice to the settlers. The idea that the United States should give notice to all settlers before ordering a survey, is a new one, indeed, and we hardly think that the defendants were serious in urging this point, and we will not dwell on it, but come to the only point of defence, the location of the grant by the Spanish Government to Paul Toups.

The first question to be examined is this, have the defendants the right to contest the correctness of the location?

The question is answered by the Supreme Court in the case of Boyce *vs.* Papin, where the Court held "*that a party having no title cannot question the correctness of a location made by a United States Surveyor.* (11 Missouri Reports, 16.)

Then defendants attempt to show by witnesses who were not present at the survey, that the survey is incorrect, and the land upon which they claim pre-emption rights is not comprised in the grant by the Spanish Government to Paul Toups.

This cannot be done, and the Supreme Court in Walls *vs.* Forbes, (1 Harr. & Gill, 441,) decided "*that a person cannot establish his claim to land by testimony of witnesses as to the plots returned upon a survey where such witnesses neither were examined upon nor attended the survey.*"

But let us go farther, and examine whether the defendants have shown the location to be incorrect.

The land is described as follows, in the original grant:

"Une terre, situeé à l'endroit nommé les Coteaux de France, "distante d'environ ouze lieues de cette capitale (N. O.,) et à envi- "ron trois lieues et dervise du fleuve, sur l'autre rive, arrivant à un "bayou nommeé Crocodile, le quel allant para lellement avec le "fleuve, à prendre la dite terre depuis la traverse du susdit bayou "jus qu'a un grand marais, gisant derriere le bayou aux cannes, a "qui fonne une langue de terre d'environ 16 ou 18 arpens, dans sa "largues moyenne, sur une profondeur d'environ deux lieues et "demie borneé, d'un coté par les prairies tremblantes, de l'autre "pas des lacs entre coupés de jouchéres."

Such is the clear, precise description of the property, *to commence*

at the Bayou Crocodile, running about 2½ leagues, to a great marsh beyond Bayou aux Cannes.

A number of witnesses have been introduced by defendants to establish the position of Bayou Crocodile, of the Vacherie St. Amand, and the distance from those places to New Orleans, to the river Mississippi, and their relative distance to each other.

As might be expected, there is a great difference of opinion upon those facts, the witnesses having no other means of ascertaining the location and the distance than their own private observation, without any possibility of correcting the errors in which they might fall.

Thus we see that Boutté, Kinler, Sartigue, Mongrué, witnesses for defendants, swear that Bayou Crocodile runs parallel with the river; whilst Maillard, Long, and Miller, also for defence, swear that Bayou Crocodile runs at right angle with the river Mississippi. The witnesses do not agree better as to distance.

Maillard, witness for defendant, says that Lanfear's plantation is at 27 miles from the city.

Lartigue places it at 24 miles.

Whilst Kinler says that the Court House of St. Charles is at 24 miles, which would place Lanfear's plantation at 21 miles from the City of New Orleans.

The same discrepencies exist in the testimony of defendants' witnesses, as to the position of the different spots mentioned in the titles: for instance, Long, Boutté, St. Amand, and Miller, state that Bayou Crocodile is at a distance of 5 to 6 miles from the Mississippi; Kinler and Lartigue Mongrue, say that it is only 2½ miles, and in other part of his testimony, the last-named witness says that from the rear of Lanfear's plantation to Bayou Crocodile, the distance is about 8 miles.

Maillard says that the distance from Bayou Crocodile to the river is 4 leagues, or 12 miles.

Of what weight could such a mass of contradictions be in a Court of Justice against a survey made by an officer of the government, having at his disposal all the instruments of his profession.

One fact is clearly established by the witnesses of the defence. It is this, that the settlements of defendants are all between Bayou Crocodile and Bayou Aux Cannes, and within 8 arpents from the railroad, on each side; that is, on part of the land described in the grant and in the survey.

The defendants allege in argument, that at the time of taking possession of that land, they supposed it to be government or public land, and they claim the right of being reimbursed the value of the improvements by them made in good faith.

This plea is not to be found in the record, and we have already traveled too far from the pleadings; but, admitting for one moment, that such rights should exist, the evidence of the value of said im-

provements, said to be worth a large sum of money, is much too vague to serve as a basis for a judgment.

Moreover, Art. 500 of C. C. would only give to defendants the right of claiming the value of the material and price of workmanship, and there is nothing before the Court to show what the same are worth.

In conclusion, the plaintiff has established his rights of ownership by a complete chain of titles, confirmation by Congress, and survey. The fact that defendants have settled thereon, although denied at first, has been afterwards admitted, and is proven by the evidence.

Plaintiff in his petition prays for damages, which he seems to have waived, as he has introduced no evidence to prove the amount of damages.

The suit having been discontinued as to Long,

It is ordered, adjudged, and decreed, that there be judgment in favor of plaintiff; that the writ of injunction issued in this case be made perpetual; and that the defendants, I. H. Harper, Obediah Keithly, T. Kœifer, Andrew Perring, S. A. Ingram, John Hanley, George Weinman, Henry Burkley, Louis Chamber, Thomas J. Harper, and Mrs. Robert Johnson, be forever enjoined from entering upon plaintiff's lands, and that the said plaintiff be quieted in the possession of said lands.

It is further ordered that defendants pay the costs of suit.

At Chambers, August 6th, 1855.

(Signed) VICTOR BURTHE,
Judge.

Nota. This case was tried by consent of parties, at a special term held in the Parish of St. Charles, on the second Monday of July, 1855, the counsel of both sides agreeing that judgment be rendered and signed during vacation.

V. B.,
Judge.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Court, at the Parish of Saint Charles, on this twentieth day of August, one thousand eight hundred and fifty-five, the eightieth of the independence of the United States of America.

(Signed) CELICOURT ST. MARTIN,
Clerk.

State of Louisiana—Parish of St. Charles.
Third Judicial District Court.

I, the undersigned, Clerk of the Third Judicial District Court of the State of Louisiana, in and for the Parish of St. Charles, do certify that the following is a true copy of all the evidence filed in

the suit of Ambrose Lanfear and Wm. Polk vs. *N. O., O. & G. W. R. R. Co. & J. G. Long and others. No.* 195 *of the docket of this Court.*

No. 195.

A. LANFEAR & WM. POLK

vs.

NEW ORLEANS, OPELOUSAS & G. W. R. R. Co., and JOHN G. LONG and others.

Third Judicial District Court.

Parish of St. Charles, May 18th, 1855.

Plaintiffs offer in evidence an extract from the general United States Survey, document marked A.

2d. An act of sale of one undivided half of plantation and slaves, &c., of a certain land called "Vacherie," by Wm. Polk to A. Lanfear, dated 7th August, 1848, document marked B, (copy of which to be furnished.)

3d. An act of sale of property and slaves, by L. C. Duncan, (in his capacity,) to Wm. Polk, dated 5th August, 1848, Doc. marked C. (Copy to be furnished.)

4th. An act of sale from the executor of Antoine Daspit St. Amand to F. M. Ward, dated December 27th, 1845, Doc. marked D. (Copy to be furnished.)

5th. An act of sale by Heirs of Paul Toups to Antoine St. Amand, dated 17th November, 1807, Doc. marked D. (Copy of which to be furnished.)

6th. A certificate of the General Land office, marked E.

N. S. Martin, duly sworn for plaintiffs, says that he knows the N. O. Opelousas R. R. That on this side of the Bayou "Saut D'Ours," so called, he found Thomas G. Harper, having a shantee near the railroad track; Mr. Johnson, about one half a mile or a mile near what is called "Johnson's Bridge;" he found, also, Mr. O. B. Keithly, Henry Burkley, and T. Freeman, all settled along the railroad, on the ridge represented to him (witness) by Mr. Wm. Polk to be "Les Coteaux de France," and according to the plan he had at the time, of said ridge. It is the same ground as represented on the map marked A, offered in evidence.

Cross-examined.

Witness says that all these settlers were cutting wood and working on the railroad, with the exception of one. Mr. Long's house on the other side of the said Bayou Saut D'Ours, between mile-posts 29 and 30, as represented on the map of the N. O., O. & G. W. R. R. Co. Mr. Long declared to witness that he had a shantee on the other side of the Bayou Saut D'Ours, occupied by his workmen.

The house where Mr. Long lives is situated on a shell mound on the other side of said bayou, between mile posts 29 and 30.

Re-examination.

It is not to the personal knowledge of witness that Long had cut any wood on this side of the bayou.

Witness states that at the time he sequestered the lands, he served notices on all the above-named settlers, and that no resistance was made to the orders, (openly,) but although duly notified to leave the premises, he found at the second visit on the spot, that they were still occupying their houses; witness intended to say they had not left the premises on the 4th August, 1854; since that time he is not aware that any of them had left. Does not know at what time they settled on the spot. Before the sequestration the impression of witness was, that it was public land.

All those with whom witness spoke about that land before and since the institution of this suit, were of opinion that it was private land; Mr. St. Amand's land.

Evidence for plaintiffs closed.

Evidence for Defendants.

Samuel Perrin, witness for defendants, being duly sworn, deposes and says that he knows the location of the house of Long; it is on the other side of post 29, between 29 and 30. On the other side of Bayou Saut D'Ours, that is, the side further from the city; witness never measured the distance from the Mississippi river to the Coteaux de France, from the Mississippi to Boutte's station on the railroad; the distance is a little less than three miles from the city of New Orleans, to that station; they call it 25 miles. Mr. Toups' claim appears on the map or survey filed and marked A., to commence at 80 arpents from the Mississippi river, which is a little less than three miles. Witness did not assist to the survey of that land.

Cross-examination waived.

Paul Maillard, witness for defendants, is a citizen of the Parish of St. Charles, and was born there; lives on the river in front of Boutte's station. The distance from the river to Boutte's station is not quite three miles; the distance from the City of New Orleans to that station is 24 miles; the distance of three miles from the river to Boutte's station, alluded to by witness, is in a direct line. The claim of plaintiff, as designed on the survey A, commences at a distance of one arpent above Boutte's.

Evidence closed, May 18th, 1855.

POLK AND LANFEAR
vs.
JOHN G. LONG AND OTHERS.

Parish of St. Charles.

In the 3d Judicial District Court.

The following evidence, taken by consent, is to remain subject to all the exceptions, as to form or merits, which said evidence taken under commission would be liable to, as well as to its admissibility.

Evidence taken on behalf of Theophilus Freeman, as administrator of the estate of Henry Buckley.

J. B. McGough, for Freeman, duly sworn, says: He believes that a surveyor commenced operations on or about the 9th of August, 1854; was with the surveyor when at work; not always, but sometime.

He had two white men as chain carriers, and a black man to chop and blaze for him, and another black man to clear the way; one belonged to Mr. Lanfear, and the other to Mr. Mayronne, to the best of his knowledge; was not with the surveyor during the latter part of his work. He noticed one day that several lines were run; he inquired from the surveyor what they meant, and the surveyor answered him, that he was obliged to do it, as Mr. Lanfear's line were to be run on high land. No other reason was given; witness believes that the surveyor one day observed that he could not have done the work if it had not been for Messrs. Lanfear and Polk; he thinks that the surveyor stated that he received an extra fee from both of these gentlemen; he thinks he named $800 00, also the services of the black boys, which were very valuable for the work. Nothing more was said about the work done; he recollects nothing further. The above facts and conversations took place this side (east) of Alligator, or Crocodile Bayou; thinks that it was about sect. 11th, Township 14th, near the foot of Mayronne's ridge. Witness followed the whole course of the bayou, down to the prairies. It runs generally eastward. From the N. W. corner of sect. 3d, Township 14, Range 20, the head of the Alligator's Bayou cannot be further than 400 yards, when from the marshes it runs on one course. Does not think that said heads of the bayou are more than 800 yards from the railroad tract. The above directions are merely given as witness' opinion; he did not use the compass; he judged from the general knowledge he has of the several points of the horizon.

The distance from the heads of the bayou to the swamps or prairies is, in witness' opinion, about three miles on a straight line. Has no idea of the running course of said bayou. He thinks the R. R. track runs westwardly, and the Bayou Alligator does not run parallel to it, but diverges from it at right angle. Knows there were some settlers, and they have left since the suit was brought, at least

4 months ago. Knows them to have been there since about February 1854, to within about 4 months. Has never heard anything said by plaintiffs relative to the land in question.

Cross-examined.

Has been in New Orleans in 1838; absented himself several years, and returned last July 4th, 1853.

Has lived in St. Charles since 22d of February, 1854, till April, 1855, when, on account of a shot wound, he was obliged to come to New Orleans to be cured.

He is a settler on the land claimed by plaintiffs; does not speak French; does not know any one of the old Creoles living there, but they do not speak English. He means those living on the river; got the names of the bayous, and several places, from the old residents.

Does not know who owned the property in question ten years ago or previous. Never knew the St. Amand family. He knows some young ones who bear that name, and now settled on the ridge.

Re-examined.

When he located he was under the impression that it was public land.

It was after he had settled there that he heard it was claimed by Lanfear and Polk.

The distance from the river to Boutte's station is about three miles; I have walked it myself.

Bayou Alligator is within 400 yards, at a distance of 27 miles of New Orleans.

So help him God.

(Signed) J. B. McGOUGH.

Sworn to and subscribed before me, this 5th day of July, 1855.

(Signed) V. JONTE,
Justice of the Peace.

No. 195.

AMBROSE LANFEAR AND WM. POLK,
vs.
N. O., O. & G. W. R. R. CO., AND J. G. LONG AND OTHERS.

July 9th, 1855: *Examination of Witnesses.*

Paul Maillard, witness for defendants, recalled: Knows where the plantation of plaintiff is situated; he means the one purchased by Antoine D. St. Amand; it is about three miles below the Court House; from the river to the railroad, the line, as usually drawn by surveyors, is about three miles long; from the city to Messrs. Polk and Lanfear's plantation the distance is nine leagues; the distance of (11) eleven leagues from the city would reach about Mr. Bougère's plantation; knows where the *Bayou des Allemands* is located; that

bayou is about nine miles distant from Boutte's stopping place. Witness thinks that the distance from the river Mississippi to Bayou des Allemands, at the point where the railroad crosses the bayou, must be about four leagues; knows but one Bayou Crocodile in the Parish of St. Charles; that Bayou Crocodile is at the terminus of the Vacherie St. Amand; has known that Vacherie St. Amand for about forty-eight years. The Bayou Crocodile does not run parallel to the Mississippi; it runs from the south to the north, in a line nearly perpendicular to the Mississippi. The Opelousas Railroad crosses the Bayou Crocodile. Knows the bayou called *Grand Bayou;* has never been known by any other name but Grand Bayou.

From the Mississippi river to Bayou Crocodile, at the point where the railroad crosses Bayou Crocodile, the distance is about four leagues; knows *Petit Bayou*; it begins on Sauve's plantation and goes as far as Bayou des Allemands; has known it by that name for the last fifty years.

Petit Bayou was never known by any other name. Knows Bayou Saut D'Ours; Petit Bayou crosses Bayou Crocodile at one end, and then goes towards the Vacherie St. Amand; knows the place called "Shell Mound;" the shell mound is on the city side of the Bayou Saut D'Ours. Bayou Crocodile is at a distance of about four miles from the Saut D'Ours; Bayou Crocodile does not meet nor cross Bayou Saut D'Ours at any point. They are at a certain distance from each other; *Bayou des Cannes* is known to witness; that bayou is higher than Bayou Saut D'Ours; is not acquainted with the defendants in this case.

No cross-examination.

John G. Long, witness for defendants, being duly sworn, deposes and says:—The distance from the Mississippi to Boutte's Station is about (3) miles, in a straight line. Knows Bayou Crocodile; the distance from this bayou to Boutte's Station is about two miles. The Opelousas Railroad crosses Bayou Crocodile; Bayou Crocodile's direction is, from the river, not parallel to it; the distance from Algiers to Bayou Crocodile is 26 miles, according to the measurement of the R. road. Knows Bayou Saut D'Ours; from the river Mississippi to Bayou Crocodile, where the R. R. crosses it, the distance is a little less than 5 miles; Bayou Crocodile is not quite three miles distant from Bayou Saut D'Ours, at the nearest point; Bayou Aux Cannes is about 30 or 34 miles from Algiers. The depot of the railroad is about three-quarters of a mile below Esplanade street, at Algiers. Knows Petit Bayou; knows the place called Shell Mound; at the Shell Mound there is no other bayou adjoining Bayou Saut D'Ours. The distance from Algiers to Bayou des Allemands is 31 miles; the distance from the Mississippi river to Bayou des Allemands is 9 miles; the land at four or five miles beyond the railroad at Boutte's, is high, and there are shanties built there; there

appears to have been settlements there some years ago. Knows some of the defendants; John Honley is located between 30 and 31 mile-posts of the railroad, near Bayou Aux Cannes. John Honley settled there in the spring of 1853; he went there, with witness, on the 8th of April, 1853, and located some short time afterwards. Andrew Perrin is located also between mile-posts 30 and 31; he went there, with witness, in November, 1853, and settled in 1853: Perrin first located between mile-posts 29 and 30; that location was made in April, 1853; he then moved between mile-posts 30 and 31 in the latter part of the spring or beginning of summer, 1854; he, witness, was then foreman, and worked four months on the first track. Knows all the improvements made between Boutte's Station and Bayou Aux Cannes; the improvements made there must amount to at least ($75,000 or $80,000) seventy-five or eighty thousand dollars. The improvements of J. H. Harper are worth one thousand dollars; J. Keeper's improvements are worth about four or five hundred dollars; Andrew Perrins' are worth four or five hundred; John Honley's improvements are worth one thousand dollars; Buckley's improvements are worth one thousand dollars; L. Chambers' about one thousand dollars; Johnson's improvements are worth one thousand dollars. Harper's, Keeper's, Buckley's, and Johnson's establishments are all on this side of Bayou Saut D'Ours, and Andrew Perrins', Honley's, and Chambers' are on the other side of Bayou Saut D'Ours.

Cross-examined.

All the persons named in the chief examination have their settlements within eight arpents from the railroad, on each side. They went there under the understanding that it was public land, unsurveyed; witness, himself, settled on the same place with that understanding.

Examination of Long's resumed in chief. All the persons referred to are settlers.

A. Boutte, being sworn for defendants, says:—That the distance from the Mississippi river to his place (Boutte's Station) is about three miles; from Algiers to Boutte's Station the distance is 24 miles, the 24-mile post is about 25 yards above Boutte's Station; from the depot at Algiers to Bayou Crocodile the distance is 26 miles; from the river to Bayou Crocodile, where the railroad crosses Bayou Crocodile, the distance is between five or six miles; the distance from Boutte's Station to Bayou des Allemands is about eight miles. Bayou Crocodile runs about parallel with the River Mississippi; it runs as shown on the map or plat marked A.

Saw Mr. Oakey when he made the survey. Mr. Oakey often came to witness' house; he had a couple of Frenchmen with him and also two negroes; never saw him surveying.

No cross-examination.

André Dorvéns, a witness for defendants, being duly sworn, says and deposes:—Has resided about seventy years in the Parish of St. Charles.

Cross-examined.

Witness is seventy years of age; was born in the Parish of St. Charles; recollects the time Louisiana belonged to Spain. The communications with the city, fifty or sixty years ago, were very difficult, and could only be had by traveling on horseback or in pirogues; the country was not thickly settled as now—each one guessed the distance the best he could, and there was nothing fixed.

The communication between the river and Bayou des Allemands was either by foot-traveling or by skiff, either going round or through the swamps. No one could ascertain the distance from Bayou des Allemands.

Camille St. Amand, witness in behalf of defendants, duly sworn, says:—

(*Taken by consent of parties.*)

The distance from the river to Boutte's Station is three miles; distance from Boutte's to Bayou Crocodile two miles; distance from Algiers to Boutte's Station twenty-four miles; from Bayou Crocodile to Saut D'Ours about one mile; from Algiers to Bayou des Allemands about thirty miles.

The Shell Mound are at the junction of Bayou Saut D' Ours and the railroad.

Cross-examination.

Has resided in the Parish of St. Charles for the last two years.

Frederick Miller, witness in behalf of defendants, duly sworn, says:—The distance from the river to Boutte's Station is not quite three miles; from New Orleans to Bayou des Allemands about thirty-two miles; Bayou Crocodile's position is at right angle with the River Mississippi. Petit Bayou crosses Bayou Crococile on the left side, on the railroad track to Bayou des Allemands. The distance from the river to the point where the Opelousas Railroad crosses Bayou Crocodile is about five miles.

Cross-examination.

Witness being asked, when you look at a map having North on the top of it, where are the other cardinal points? answers, South behind your back; East on the right-hand side, and West on the left.

Being then shown the map filed by plaintiffs, and asked to indicate the course of the river, such as set forth on said map, says,—that he does not understand said map. Being asked, What is the direction of the arrow of said map? he answers, He thinks it runs from North to South, as it seems to witness.

July 10th, 1855.

Jacques Kinler, a witness for defendants, being duly sworn, says and deposes: He is born in the Parish of St. Charles, and has always resided therein; knows Bayou Crocodile; it runs parallel with the river. It is situated about two or two and a half miles from the Mississippi river, at its nearest point, in a straightly line. That bayou is at about 26 miles from New Orleans, according to the mile posts on the railroad. Does not know the distance from New Orleans to Bayou des Allemands. Formerly it would have been impossible to go on horse-back from Boutte's Station to Bayou des Allemands; because Bayou Saut d'Ours was between those two places, but it was possible to pass there on foot. There was a road which went as far as Bayou Crocodile, and from there there was a footway going to Bayou des Allemands. The road alluded to, commenced at and started from Lanfear's plantation. Knows that the distance from New Orleans to the St. Charles Court House is 24 miles. He has learned that lately, but did not know formerly what the distance was. Does not recollect having heard, thirty or thirty-five years ago, what distance there was from New Orleans to Bayou des Allemands.

Being asked, if twenty or thirty years ago he knew of any persons traveling in those parts, and going to Bayou des Allemands?

Answers—Yes; it was the road that all the sportsmen took to go to Bayou des Allemands. Witness is forty-six years. It is since the railroad was built that witness learned that Bayou Crocodile was two miles and a half distant from the Mississippi river; has seen Bayou Crocodile for the first time about fifteen years ago; at that time he supposed the distance to be a great deal more than he found it to be since, because the foot was not being straight; the travelers had to go right and left from the straight line; he then supposed the distance to be at least seven or eight miles.

No cross-examination.

Lartigue Montgrué, witness for defendants, being duly sworn, says and deposes: Has resided in the Parish of St. Charles since 1839. The distance from New Orleans to Mr. Lanfear's plantation is 24 miles, by the river; has known the distance to be 24 miles, since he came to this parish. The distance along the railroad, from Algiers to Bayou Crocodile is about 25 or 26 miles; from New Orleans to Bayou des Allemands the distance is 32 miles; has known several old inhabitants of this parish. Mr. Antoine Daspit St. Amand, who was formerly the owner of Lanfear's plantation, was the father-in-law of witness, and lived in this parish 95 years. Knows J. H. Harper, one of the defendants in this case; knows him to be one of the settlers on the land in dispute.

Cross-Examination.

Previous to the building of the railroad, the oldest inhabitants did not know the distance from the city to the Bayou des Allemands; it has only been known since the building of the railroad.

Re-examination in Chief resumed.

The distance from New Orleans to Bayou des Allemands was supposed by the old planters to be about 36 miles. It was also supposed that from the rear of Mr. Lanfear's plantation to Bayou des Allemands, the distance was 12 miles. Has known the Vacherie St. Amand; it commenced at Bayou Crocodile, and extended in the rear. Mr. St. Amand kept cattle at that vacherie, and had some there fifteen years ago. The vacherie belonged to Mr. St. Amand. The cattle were driven to the vacherie by land. The distance from the rear of the plantation to Bayou Crocodile, was then 8 miles; it is the same distance now.

Mr. St. Amand had a road to go to the vacherie; the road does not exist now. Bayou Crocodile runs parallel with the Mississippi river.

Being shown plan marked A: says that Bayou Crocodile runs about as marked on said plan. The road alluded to, going to the vacherie, was for driving cattle, and to ride on horseback. Does not know if the Sheriff is in possession of the land in dispute. It is not to witness' knowledge that anybody has possession for the Sheriff. Has never known Mr. Lanfear as having the land in dispute in his possession. In front of Mr. Lanfear's plantation there was a mile post, bearing No. 24. The 33 mile post would then go as far up as Mr. Ranson's plantation, above the Court House. From Lanfear's plantation to Ranson's, the distance is about three leagues: from the River Mississippi to Bayou Crocodile, where the railroad crosses that bayou, the distance is about two miles and a half; he guesses that the distance is such, from comparing it with the distance from the river to railroad, at Mr. Lanfear's plantation, the two being about the same. The vacherie which extended in the rear of Lanfear's plantation, was comprised between the parallel lines of the plantation.

Being shown plan H, finds that the vacherie is not between the parallel lines of the plantation. Does not know whether the vacherie is on the right or left of Bayou Crocodile, but it extends (the vacherie) in the same direction as the plantation. The vacherie was about 13 acres front, in width. He does not know if the vacherie inclined on the right or left, but it runs like plantation of Lanfear. From the rear of Lanfear's plantation to the vacherie, the distance is about 8 miles.

Louis Friloux, witness for defendants, sworn, says: That he was born in the Parish of St. Charles; is 35 years old. Knows Bayou Crocodile; does not know the distance from the bayou to the Mississippi. Before the railroad was built, there was a way running to Bayou Crocodile; does not know the length of that road. From the city to his (witness') plantation the distance is 21 miles; witness lives three miles below Mr. Lanfear's plantation. Has known Bayou Crocodile since 18 or 20 years; at that time there was a foot-path, or road, going from Lanfear's plantation to Bayou Crocodile. Has known the vacherie that belonged to Mr. Antoine Daspit St. Amand; has known it since 15 or 20 years; it was beyond Bayou Crocodile; he means on the side towards Bayou des Allemands. Knows J. H. Harper.

No cross-examination.

Jacques Kinler re-called, for defendants: The road referred to by him in his first examination, from Lanfear's plantation to Bayou Crocodile, was 5 or 6 miles long, from the river Mississippi, where it commenced, to Bayou Crocodile. Has known the Vacherie St. Amand; it was beyond Bayou Crocodile; has known it since about 15 years. The vacherie was on the side of the Bayou des Allemands. The vacherie extended in the rear.

No cross-examination.

Augustin Puysegur, witness for defendants, sworn on his voiz dire, says: That he is a settler on the land in dispute. He settled on the premises about 3 months' ago; since the institution of this suit.

Being sworn as a witness, says: That the distance from the river Mississippi to Boutte's Station, is 3 miles; the distance from New Orleans to Bayou Crocodile, is 26½ miles; from the river to Bayou Crocodile, where the railroad crosses it, the distance is from 6 to 8 miles. Knows the vacheries; in coming from New Orleans, it is after or beyond Bayou Crocodile, on the side of Bayou des Allemands; it is at about twice the distance of gun shot from Bayou Crocodile. There is a large marsh, or pond, near the vacherie; it is on the right of the railroad, going to Bayou Crocodile. Knows Bayou aux Cannes; the pond or marsh spoken of above is not near Bayou aux Cannes. There are some prairies, but they are at about three miles from the vacheries. There are, also, lakes; has only seen lake called Petit Lac. The distance between the lakes and prairies is about 8 or 9 miles; from the vacherie to the river, in a straight line, the distance is 7 or 8 miles. Has worked with Mr. Oakey, when he surveyed the land in dispute. The chains were sometime carried by white men, at other times by negroes. The pins or marks were also planted by negroes, and sometimes by white men. While the men were surveying and planting the marks, he

(witness) was marking the trees; the white men were sometime sick, and there was not other persons with Mr. Oakey than the negroes. Witness was engaged in the surveying for about ten days. That was at the time Mr. Oakey was measuring the lands in dispute. The negroes referred to belonged, one to Mr. Lanfear, the other one to Mr. Ranson; the slave of Mr. Ranson was black, and named Brown. Witness never saw Brown carrying the chain, or planting marks or pins, but has seen François doing the same. Never saw the slaves alone measuring or planting marks; they were always accompanied by some white persons. The chains and pins spoken of are those usually used for surveying. Witness has been paid for his services. The chains were carried sometimes, and pins planted, by one white man and one slave.

No cross-examination.

Defendants offered in evidence, document marked G.

James M. Askew, witness for defendants, sworn; is a settler on the land in dispute since October, 1854. Saw Mr. Oakey surveying the land in dispute; saw negroes carrying the chain and stakes; there were white men along with the negroes. Saw them, for one or two hundred yards, cutting through the canes. Thinks he has seen one white man and one negro carrying the chain, and using them for surveying the land, as shown by map A.

No cross-examination.

H. Hunley, witness for defendants, is one of the settlers on the lands in dispute. Has never seen Sheriff in possession of the land; is a lawyer. Once saw Mr. Oakey making the survey of the lands. Witness was walking on the railroad; the Surveyor had crossed the railroad, and appeared to be surveying the vacherie road. The Surveyor had crossed the railroad near the house of Mr. Huot, and was about 75 yards from the railroad, and the chain carriers, being one white man and one negro, were just crossing the railroad in the act of surveying. Cannot tell when that was; thinks it was in January, but is not certain; the white man was in front and the negro behind; the white man was putting down the Surveyor's pins, and the black man taking them up, whilst surveying. Never saw Mr. Oakey surveying any of the rectangular lines.

No cross-examination.

It is agreed that the evidence of Colonel Fisher will be taken within ten days, in the city of New Orleans, and submitted with the record, subject to all legal exceptions.

R. N. Chapman, sworn for defendants; settled on the land in dispute, in August 1854; returned there last January. Sometime in 1853, Mr. Polk told witness that these lands belonged to him and Lanfear, and he did not want witness to take a set of loafers

there. Witness said he did not take any loafers there, that he settled there, thinking they were government lands, and those who came with him were gentlemen. Witness asked Mr. Polk, by what right he claimed those rights? and Polk answered, it was by right of transcripts taken by Mr. Lanfear, two years previous. Witness told Polk that he had examined the plans at the land office, and was informed that it was government land, and in consequence had located there. Polk then told witness that he had known him, witness, since he came in this parish, and could not interfere with him, but begged him, witness, not to induce loafers to come and settle on these lands, and give him trouble afterwards. Had no other conversation with Mr. Polk since, except about seven weeks ago.

Cross-examined.

Witness is located on North-East corner of Section 3, as shown by map A; had entered his claim of pre-emption before the survey was made; since then he attempted to prove his claim, but did not do so.

It is admitted that a protest was made in the Land Office before the survey was completed; that the survey was made and approved after the protest, and that the protest has since been sent to Washington.

The evidence then closed.

Lanfear and Polk, (Lanfear Subrogated,)
vs.
J. G. Long, and others.

Third Judicial District Court,
Parish of St. Charles.

Testimony taken by consent.

William Fisher, duly sworn for defendants, says: Mr. William Polk said that, if ever he or Mr. Lanfear had a claim to the land in dispute, it was on the other side of Alligator Bayou.

And that all from Bayou Crocodile towards Mayronne, is vacant land, and all from the back part of Ashton plantation to Township line is also land belonging to Government or State.

Mr. Polk told witness that he and Mr. Lanfear had hired men to go and make settlement on the different quarter sections for their account, at the salary of $200 or $250 per annum.

These are the quarter sections, in which Schmidt and the Huot family settled, (several in numbers.)

The quarter sections, meant here, are fronting on the railroad, on this side of Bayou Crocodile, and about as far as Township line.

These conversations took place last winter, about October or November, at Mr. Davis' plantation.

Has a letter of Wm. Polk, which he now produces, containing the same information as above stated.

Witness is himself a settler on the land. Polk and Lanfear employed Powell to make a survey of this land, in Township 14, which was made previous to the late survey; he was paid $1800 00.

(Signed) WM. FISHER.

Sworn to and subscribed before me, this 1st day of July, 1855.

(Signed) R. RICHARDSON,
3rd J. P.

Approved.

(Signed) ST. PAUL & BOUNY, for Plaintiffs.
For CUTTLER & TRAIN, Atty's for Defendants,
(Signed) H. L. HUNLEY.

In testimony whereof, I have hereunto set my hand and affixed the seal of this Court, at the Parish of St. Charles, on this twenty-first day of August, one thousand eight hundred and fifty-five, the eightieth year of the Independence of the United States of America.

C. ST. MARTIN,
Clerk.

AFFIDAVITS

Relative to the location of Paul Toups' Claim.

Before me, R. Richardson, 3d Justice of the Peace, in and for the Parish of Orleans, personally came J. B. Planché, Esq., of this city, who, being duly sworn, says, that he has known, for a great many years, the plantation in the Parish of St. Charles, on the right bank of the Mississippi river, formerly owned by the late Mr. Antoine Daspit St. Amand. It is the same now owned by Mr. Ambrose Lanfear. He has also known the tract in the rear thereof, known by the name of the Vacherie St. Amand, which extends along the ridge known as "Les Coteaux de France," the same, to the best of his knowledge and belief, as is represented, on a plan of Township 14, R. 20 E., signed "*Ne Varietur*," by Judge Richardson, and to him exhibited.

Affiant further declares that it is within his knowledge that part of the said ridge of land was actually used by the late Mr. Antoine Daspit St. Amand as a "vacherie," though long since abandoned for that purpose, and that the whole was for more than thirty years in the undisturbed possession of said St. Amand, and always considered to he his property.

Witness my hand, in New Orleans, this 10th day of April, 1855.

J. B. PLANCHE,

[L. S.] Sworn to and subscribed before me, this 10th April, A. D., 1855.

R. RICHARDSON,
3d J. P.

Before me, R. Richardson, Third Justice of the Peace in and for the Parish of Orleans, personally came L. E. Forstall, Esq're, of this city, who, being duly sworn, says, that in the month of December, 1845, he, at the request of Mr. Ambrose Lanfear, of this city, attended the sale of the property of the succession of Antoine Daspit St. Amand, deceased, held on the plantation in the Parish of St. Charles, that belonged to the said deceased: at which sale he bought the said plantation by order of said Lanfear. He likewise bought at said sale, for account of said Lanfear, a tract of land known as La Vacherie St. Amand, immediately in the rear of the plantation fronting on the river, said tract extending along the ridge known as the "Coteaux de France." The same, to the best of his knowledge and belief, as is laid down on the plan of Township 14, R. 20, E., signed "Ne Varietur" by Judge Robertson, and to him exhibited.

Affiant further declares that the said property had been in the undisturbed possession of A. D. St. Amand for more than thirty years to his knowledge.

Witness my hand in New Orleans, this 10th day of April, 1855.

L. E. FORSTALL.

[L. S.] Sworn to and subscribed before me, this 10th April, 1855.

R. RICHARDSON,
3d J. P.

Before me, R. Richardson, Third Justice of the Peace in and for the Parish of Orleans, personally came Theophile Wiltz, Esq're, of this city, who, being duly sworn, says, that he has known the plantation formerly owned by Mr. A. D. St. Amand for a great many years; it is the same as that now owned by Mr. Ambrose Lanfear; he has known the place called "La Vacherie St. Amand," previously owned by Paul Toups. It extended from the rear of the front tract, as far as Bayou des Allemands, crossing the whole of the ridge known as "Les Coteaux de France," as the same is represented on a plan of Township 14, Range 20, E., signed *Ne Varietur*, by Judge Richardson, and to him exhibited.

Affiant further declares that the said Vacherie, actually used as such by the former proprietors and kept on the other side of Bayou Crocodile, had been abandoned long since, but was only a part of Vacherie grant, and that to his own knowledge the whole ridge has been in the undisputed possession of Toups and St. Amand for more than thirty years.

THEOPHILE WILTZ.

[L. S.] Sworn to and subscribed before me, this 5th day of April, 1855.

R. RICHARDSON,
3d J. P.

Before me, R. Richardson, a Justice of the Peace in and for the Parish of Orleans, personally came Peter Van Rootan, Esq., of this city, who, being duly sworn, says, that he has known the plantation formerly owned by Mr. A. D. St. Amand for a great many years; it is the same as that now owned by Mr. Ambrose Lanfear. He has known the place called "La Vacherie St. Amand," previously owned by Paul Toups; it extended from the rear of the front track as far as *as* Bayou des Allemands, crossing the whole of the ridge known as "Les Coteaux de France," as the same is represented on a plan of Township 14, Range 20, east, signed "*Ne Varietur*," by Judge Richardson, and to him exhibited. Affiant further declares that the said vacherie, actually used as such by the former proprietors, was kept on the other side of Bayou Crocodile, has been abandoned long since, but was only a part of Vacherie grant, and that to his own knowledge the whole ridge has been in the undisputed possession of Paul Toups and St. Amand for more than thirty years.

P. VAN ROOTAN.

[L. S.] Sworn to and subscribed before me, this 11th April, 1855.

R. RICHARDSON,
3d J. P.

SURVEYOR-GENERAL'S OFFICE,
Donaldsonville, August 22d, 1855.

The within are true copies of the originals on file in this office.

(Signed) WM. J. McCULLOH,
Surv. Gen., La.

Mayoralty of New Orleans.

Being called on to certify to the character and standing of Gen'l J. B. Planché, L. E. Forstall, Theophile Wiltz, and Peter Van Rootan, in order that the testimony which they have given may be properly appreciated where they may not be personally known, I hereby make known to all whom it may concern, that they are citizens of this State, of most unquestionable standing and character, and that any testimony by them given is entitled to the fullest confidence and credit in judicature and elsewhere. The three first named are natives of this State, whereof the first has been Lieutenant-Governor, and the last, though born in another State, has been a resident of Louisiana for a long period of years.

Witness my hand, in New Orleans, this 27th day of August, 1855.

(Signed) JNO. L. LEWIS,
Mayor.

STATE OF LOUISIANA.

Parish of Orleans.

Before me, Richard Richardson, Third Justice of the Peace in and for the Parish aforesaid and the City of New Orleans, duly commissioned and sworn, personally came and appeared Maurice Hawke, of the Parish of Ascension, who, being duly sworn, says: I am a duly qualified U. S. Deputy Surveyor; I have made, under contract with the United States Land Office, at Donaldsonville, the survey of Township 14 S. R. 20 E., and part of Township 13 S. R. 20 and 21 east, west of Mississippi river, and I do hereby certify, that whilst making said survey, I consulted with some of the oldest inhabitants, apparently disinterested in the case, who stated to me that the water course of Bayou marked on said Township "Petit Bayou," was also anciently called Crocodile; that formerly the Bayou named "Bayou Crocodile" on said plan, was considered as a branch of the former, but that in course of time the longest of said bayous took the name of "Petit Bayou," and the smaller one preserved that of Bayou Crocodile, as set forth on said map by me made. So help me God.

MAURICE HAWKE,
U. S. Dy. S.

Sworn to and subscribed before me, this 23d day of August, 1855.
R. RICHARDSON,
3d J. P.

(Translation.)

Sale of the Plantation of Jacques Rixner to Paul Toups.

This day, the 20th of the month of November, 1789, at 9 o'clock A. M., personally came before me, Jacques Masicot, Captain of Militia, Judge and Commandant of the Parish of St. Charles, (German Coast,) Mr. Jean Louis Rixner, Testamentary Executor of his deceased brother, Jacques Rixner, who declared, in presence of Messrs. André Waekering and Louis Bouteillié, Eugéne Fortier, having sold, transferred, and assigned, now and for ever, in full ownership and enjoyment, under full warranty of debts, mortgages, evictions and substitutions whatever, a certain plantation belonging to the estate of the late J. Rixner, containing nine arpents front by eighty in depth, according to original titles, situated about seven leagues from the city; bounded on the upper side by lands belonging to me, the undersigned commandant, and below by lands of the succession on the *left ascending bank* of the river, together with all the buildings thereon, enclosures, &c., as well as four oxen teams, and as the whole exists and is set forth in the inventory, the vendor hereby reserving from said sale one hundred cypress trees, to be taken from rear, for the use and benefit of the land

reserved by the daughter of the deceased. The present sale is made for the price of $5,000 00, in current money, to *Paul Toups*, here present, and excepting for himself, heirs and assigns, as follows, to wit: $1,000 00 payable in all December, 1790; $2,000 00 payable in all December, 1791, and $2,000 00 payable in all December, 1792. The purchaser acknowledges having seen the said land and possession thereof from this time, to enjoy the same as his own; the said plantation is hereby mortgaged, and shall not be sold until final payment, &c., &c.

Done and passed at the Commandant's house on the day, month, and year above written, the parties and witnesses having signed after due reading.

(Signed) JN. LOUIS RIXNER,
" PAUL TOUPS,
" EUG. FORTIER,
" ANDRE WAEKEREY,
" LOUIS BOUTEILLIE.
" JACQUES MASICOT.

A true Copy, from the Original on file, in the Archives of St. Charles.

Witness my hand and seal of office, Parish of St. Charles, August 27th, 1855.

(Signed) EMILE TASTET, [L. S.]
Recorder.

I, the undersigned, Clerk of the Third Judicial District in and for the Parish of St. Charles, do hereby certify the signature of E. Tastet, Recorder of this Parish, to be true and genuine.

St. Charles, August 27th, 1855.

(Signed) C. ST. MARTIN, *Clerk.* [L. S.]

State of Louisiana,

Parish of St. Charles.

Be it known that before me, Emile Tastet, Recorder and Justice of the Peace, duly qualified and sworn in and for the Parish of St. Charles, personally came and appeared Mr. Elie Champagne, a native-born citizen of the parish, aged about seventy years, and well known to me, the undersigned Recorder and Justice of the Peace, as one of the most trustworthy and honorable citizens of this parish aforesaid, who, being duly sworn, says: That he has known the late Paul Toups, who departed this life upwards of fifty years ago; that the said Paul Toups at that time lived and resided in this parish, on the right bank of the Mississippi, at about twenty odd miles from town, on the plantation, a part of which now belongs to the assignees or vendees of A. Daspit St. Amand, (now A. Lanfear's,) and to Daniel Lambert, and that his "Vacherie" was in the rear of it.

The names of the heirs of Paul Toups are Frederic Toups, Manette Toups, and Marie L. Toups, now deceased.

So help him God.

ELIE CHAMPAGNE.

Sworn to and subscribed before me, on this 27th day of August, 1855.

EMILE TASTET, [L. S.]
Record. & J. P.

I, the undersigned, Clerk of the Third Judicial District Court of the Parish of St. Charles, do hereby certify the signature of E. Tastet, above written, to be true and genuine, and that said E. Tastet is Recorder and J. P. of this Parish.

St. Charles, August 27th, 1855.

C. ST. MARTIN, *Clerk.*

(Endorsed.)

United States General Land Office.—Memorial of Ambrose Lanfear, (assignee of Paul Toups,) of New Orleans.—On certain conflicting claims in Township XIV. S., Range XX. E., west of Mississippi River.—Henry St. Paul, Solicitor, (outside cover torn off and mislaid.)—Lanfear vs. Hunley.

Document L. H., No. 12.

Printed pre-emption Instructions under acts of 4th September, 1841, and 26 August, 1842.

Introduced by defendant at page 121.

Circulars
To
Registers and Receivers of the United States Land Offices.

GENERAL LAND OFFICE,
September 15, 1841.

Gentlemen:—Annexed is a copy of that portion of an act of Congress approved on the 4th instant, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," which has relation to the subject of pre-emptions. Your attention is directed to the several provisions of that portion of said act, and your observance enjoined of the rules hereinafter stated, as prescribed by the Secretary of the Treasurer, in accordance with the 12th section of said act.

The individual claiming the benefits of said act must be—

First. A citizen of the United States, or have filed his declaration of intention to become a citizen.

Second. Either the head of a family, or a widow, or a single man over the age of twenty-one years.

Third. An inhabitant of the tract sought to be entered, upon which, in person, he has made a settlement, and erected a dwelling house since the 1st of June, 1840, and prior to the time when the land is applied for, which land must, at the *date of the settlement*, have had the *Indian title extinguished*, and *been surveyor* by the United States.

A person failing in any one of these requisites can have no claim by virtue of this act.

A person bringing himself within each of the above requirements, by proof satisfactory to the Register and Receiver of the land district in which the lands may lie, taken pursuant to the rules hereinafter prescribed, will, after having taken the affidavit required by the act, be entitled to enter, by legal subdivisions, any number of acres, not exceeding one hundred and sixty, or a quarter section, to include his residence, and he may avail himself of the same at any time prior to the day of the commencement of the public sale, including said tract, where the land has not yet been proclaimed.

Where the land was subject to private entry at the date of the settlement *made since 1st of June*, 1840, *and prior to the passage of this act*, and the settler is desirous of securing the same under this act, he must give notice of his intention to purchase the same under its provisions within *three months* from the passage of the law, that is, before the *fourth day of December next.*

(Where the land was subject to private entry at the date of the law, and a settlement shall *thereafter* be made upon such land, or) where the land shall hereafter become subject to private entry, and *after that period a settlement shall be made*, which the settler is desirous of securing under this act, such notice of his intention must be given within *thirty days* after the date of such settlement. Such notice, in both (all) cases, must be a written one, describing the land settled upon, and declaring the intention of such person to claim the same under the provisions of this act. (See *forms A and B, hereto annexed.*

In the first case the proof, affidavit, and payment must be made within *twelve months* after the *passage of this act;* and in the second case, within *twelve months* after the *date of such settlement.*

These declaratory statements are to be regularly numbered by the Register in the order of the date of their reception, and entered in a suitable book, columned off, to show the number, date when received, name of the party, and description of the tract claimed, and monthly abstracts of the same are to be furnished to the General Land Office with your other monthly returns.

The existence of these claims should be indicated on the township plats by marking, with *red ink*, a cross (+) on the spot occupied by the tract claimed; and, also, with red ink, noting on the same spot the number of the declaratory statement, in neat and very small *figures*, so as not too much to interfere with the regular

annotations, which will have to be made when the regular proof and payment shall have been made by the claimant, and his entry of the tract consummated. The existence of such claims should also be noted, *in pencil*, in their appropriate places in the *tract books*.

The tracts liable to entry under this act are some one of the following designations:

First. A regular quarter section, notwithstanding its quantity, may be a few acres more or less than one hundred and sixty; or a quarter section which, though fractional in quantity by the passage of a navigable stream through the same, is still bounded by regular sectional and quarter sectional lines.

Second. A fractional section, containing not over one hundred and sixty acres, or any tract, being a detached or anomalous survey, made pursuant to law, and not exceeding said quantity.

Third. Two adjoining half quarter sections (in all cases to be separated by a north and south line, except on the north side of townships, where the surveys are so made as to throw the excess or deficiency on the north and west sides of the township) of the regular quarters mentioned in the first designation; or, two adjoining eighty-acre subdivisons of the irregular quarters found on the north and west sides of townships, where more than two such subdivisions exist, or the excess may render them necessary, provided, in the latter case, the aggregate quantity does not exceed one hundred and sixty acres.

Fourth. Two half-quarter, or eighty acre subdivisions of a fractional or broken section adjoining each other, the aggregate quantity not exceeding one hundred and sixty acres.

Fifth. A regular half-quarter and an adjoining fractional section, or an adjoining half-quarter sub-division of a fractional section, the aggregate quantity not exceeding one hundred and sixty acres.

Sixth. If the pre-exemptor should not wish to enter the quantity of one hundred and sixty acres, he may enter a single half-quarter section, (made by a north and south line,) or an eighty acre subdivision of a fractional section.

Seventh. One or more adjoining (residuary*) forty-acre lots may be entered, the aggregate not exceeding one hundred and sixty acres.

Eighth. A regular half-quarter, a half-quarter subdivision, or a fractional section, may each be taken with one or more (residuary*) forty acre subdivisions lying adjoining, the aggregate not exceeding one hundred and sixty acres.

(These lots can only be called "*residuary*" after the sale of the other portions of the same quarter section, or fractional quarter section, pursuant to the act approved April 5, 1832, authorizing such minor subdivisions.

It is evident, therefore, that forty-acre subdivisions can, in no

case, be permitted of land not yet proclaimed and offered at public sale.*)

Only one person on a quarter section is protected by this law, and that is the one who made the *first settlement*, provided he shall have conformed to the other provisions of the law.

A person who has one *availed himself* of the provisions of this act cannot, at any future period, or at any other land office, acquire another right under it.

No person who is the proprietor of *three hundred and twenty acres* of land in any State or Territory of the United States, is entitled to the benefits of this act.

No person who shall *quit* or *abandon his residence* on his *own land*, to reside on the public land in the *same State* or *Territory*, is entitled to the benefits of this act.

No pre-emption right exists by reason of a settlement on and inhabitancy of a tract, unless at the date of such settlement the Indian title thereto had been extinguished, and the land surveyed by the United States.

The approval of the plat is the evidence of the legality of the survey; but in accordance with the spirit and intent of the law, and for the purpose of bringing the settler within its provisions, the land is to be construed as surveyed, when the requisite lines are run on the field and the corners established by the deputy surveyor.

No assignments or *transfers* of pre-emption rights can be recognized. The patents must issue to the claimants, in whose names alone all entries must be made.

Sundry descriptions of land which are exempted from the operations of this act.

First. Lands included in any reservation by any treaty, law, or proclamation of the President of the United States, and lands reserved for salines and for other purposes.

Second. Lands reserved for the support of schools.

Third. Lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation, to which the title has been or may be extinguished by the United States at any time during the operation of this act.

Fourth. Sections of land reserved to the United States, alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement.

Fifth. Sections, or fractions of sections, included within the limits of any incorporated town.

Sixth. Every portion of the public lands which has been selected as a site for a city or town.

Seventh. Every parcel or lot of land actually settled and occupied for the purposes of trade, and not agriculture.

Eighth. All lands on which are situated any known salines or mines. Persons claiming the benefit of this act are required to file duplicate affidavits, such as the law requires, and to furnish proof, by one or more disinterested witnesses, to your entire satisfaction, of the facts necessary to establish the three requisites pointed out in the commencement of these instructions.

The witnesses are to be first duly sworn or affirmed to speak the truth, and the whole truth, touching the subject of inquiry, by some officer competent to administer oaths and affirmations; and if not too inconvenient, by reason of distance of residence from your office, or other good cause, must be examined by you, and the testimony reduced to writing in your presence, and signed by each witness, and certified by the officer administering the oath or affirmation, who must also join you in certifying as to the respectability and credit of each witness.

In case adverse claims shall be made to the same tract, each claimant must be notified of the time and place of taking testimony, and allowed the privilege of cross-examining the opposite witnesses, and of producing counter-proof, which should also be subject to cross-examination.

When, by the reason of distance, sickness, or infirmity, the witnesses cannot come before you, you are authorized to receive their depositions, which must be, in all other respects, conformable to the within regulations. The notice to adverse claimants should be in writing, and should be served in time to allow at least a day for every twenty miles the party may have to travel in going to the place of taking evidence. The proof, in all cases, should consist of a simple detail of facts merely, and not of statements in broad or general terms, involving conclusions of law. It is your exclusive province to determine the legal conclusions arising from the facts. For instance, a witness should not be permitted to state that a claimant is the "head of a family," &c., following the words of the law, but should set forth the facts on which he grounds such allegation, because such a mode of testifying substitutes the judgment of the witness for your's, and allows him not only to determine the facts, but the law. A witness may possibly conscientiously testify that a minor son living with a widowed mother was the head of the family; and, in another case, similar in point of fact, another witness, equally conscientious, might testify that the widowed mother was the head of the family. There cannot be a uniform construction given to the law, if it is carelessly left to the opinion of every witness. You are, therefore, instructed not to receive as testimony or proof a general statement which embodies, in general terms, the conclusions of law, without stating the facts specifically. The witnesses must state, if

the pre-emptor be the "head of a family," the facts which constitute him such, whether a husband having a wife and children, or a widower, or an unmarried person under twenty-one years of age, having a family, either of relatives or others depending upon him, or hired persons, or slaves. All the facts respecting the settlement in person, inhabitancy or personal residence, the *time of commencement*, the manner and extent of continuance, as well as those showing the apparent objects, should be stated. It must be stated that the claimant made the settlement on the land in person; that he has erected a dwelling upon the land; that the claimant lived in it, and made it his home, &c. By this means, you will be enabled to determine whether or not the requisites of the law have been complied with in any given case. Should you decide against a claimant, who, feeling dissatisfied with such decision, may request, in writing, the opinion of this office thereon, you will forthwith forward all the original papers touching said claim, and a brief report of your reasons for rejecting it; and in the meantime will not permit the land claimed to be entered or sold without an order from the department. The affidavit of the claimant, in reference to the *fact of settlement, &c.*, need not be required. It is, in no case, legal evidence on these points, and therefore should not form a part of the proof in reference thereto. The *only* affidavit required of the claimant is that prescribed by the 13th section of the act, which is to be taken before the Register or Receiver. (See form C, hereunto annexed.)

No entry must be permitted until this affidavit is taken. Duplicates thereof must he signed by the claimant, and the fact of the oath being taken, must be certified by the Register or Receiver administering it; one copy to be filed in your office, and the other to be transmitted to this office. Each entry made by virtue of this act must be designated by marking on the margin of your quarterly accounts and monthly abstracts, opposite to the tract, the abbreviation, "*Pre'n*, 1841," and on the face of the receipt and of the certificate, "*Pre-emption Act* of 1841."

You will continue, unbroken, the regular series of numbers and certificates. The original proof, affidavit, and receipt must be *must be* filed with the certificate of purchase, in each case, *each paper being appropriately endorsed* and transmitted to this office with your monthly abstract, which must contain and show the aggregate of lands sold, and the purchase money at the foot of the abstract. Also, a separate aggregate of the lands sold, and the purchase money under each of the pre-emption acts, by virtue of which any entries in that month may be made. No excuse can be allowed for negligence, in observing this direction.

The forms for application, receipts, and certificates, will be the same as those used for private entries, the district provision for

land, subject to private entry, rendering a separate form for lands of the latter description unnecessary.

Very respectfully, gentlemen,
Your obedient servant,
(Signed) E. M. HUNTINGTON,
Commissioner.

The Register of the Land Office,
and Receiver of Public Moneys.
Land Office at

Declaratory Statements

of a settler on land, subject to private entry, at the date of settlement, required by the fifteenth section of the act of fourth September, 1841.

FORM A.

For cases where, at the date of the law, the land claimed was subject to private entry.

I, A B, of ——, being (the head of a family, or widow, or single man, over the age of twenty-one years, as the case may be, and a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be,) have, since the first day of June, 1840, to wit: on the —— day of ——, A. D. 185–, settled and improved the —— quarter section, number ——, in township number ——, of range number ——, in the district of lands, subject to sale at the land office at ——, and containing —— acres, which land *was subject to private entry at the passage* of the act of 4th September, 1841; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under the provisions of said act of 4th September, 1841.

Given under my hand this —— day of ——, A. D. 185–.
(Signed) A B.
In presence of
C D.

FORM B.

For cases where the land claimed shall have been rendered subject to private entry since the date of the law.

I, A B, of ——, being (the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen, as required by the naturalization laws, as the case may be,) did, on the —— day of ——, A. D. 185–, settle and improve the —— quarter of section number ——, in township number ——, of range number ——, in the district of lands sub-

ject to sale at the land office at ——, and containing —— acres, which land *has been rendered subject to private entry since* the passage of the act of 4th September, 1841, but prior to my settlement thereon; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841.

Given under my hand, this —— day of ——. A. D., 185–.

(Signed) A B.

In presence of

C D.

FORM C.

Affidavit required of pre-emption Claimant.

I, A B, claiming the right of pre-emption under the provisions of the act of Congress, entitled "An Act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," approved September 4, 1841, to the —— quarter of section number ——, of township number ——, of range number ——, subject to sale at ——, do solemnly swear, (or affirm, as the case may be,) that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit: and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which I may acquire from the government of the United States should inure, in whole or in part, to the benefit of any person except myself.

(Signed) A B.

I, C D, Register, (or E F, Receiver,) of the land office at ——, do hereby certify that the above affidavit was taken and subscribed before me, this —— day of ——, A. D. 185–.

(Signed) C D, Register.
or E F, Receiver.

AN ACT

To appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights.

SECT. 10. *And be it further enacted*, That from and after the passage of this act, every person, being the head of a family, or widow, or single man over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen as required by the naturalization laws, who, since the first day of June, A. D. eighteen hundred and forty, has made, or shall hereafter make, a settlement in person on the

public lands to which the Indian title had been, at the time of such settlement, extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be and is hereby authorized to enter with the Register of the Land Office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter-section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States, and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portions of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines shall be liable to entry under and by virtue of the provisions of this act; and so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing-rabbit creek, be and the same is hereby repealed: *Provided*, That such repeal shall not effect any title to any tract of land secured in virtue of said treaty.

SECT. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter-section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such persons shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers, shall be settled by the Register and Receiver of the district within which the land is situated, subject to an appeal to and a revision by the Secretary of the Treasurer (Interior) of the United States.

SECT. 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required shall be made to the satisfaction of the Register and Receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasurer, (Interior,) who shall each be entitled to receive fifty cents from each applicant for his services, to be rendered as aforesaid; and all assignments and transfers of the right, hereby secured, prior to the issuing of the patent, shall be null and void.

SECT. 13. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the Receiver or Register of the land district in which the land is situated (who are hereby authorized to administer the same) that he or she has never had the benefit of any right of pre-emption under this act; that he or she is not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of bona fide purchasers for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public Land Office of such district, and to transmit a duplicate copy to the General Land Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

SECT. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been or may be appointed by the proclamation of the President; nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required, before the day appointed for the commencement of the sales as aforesaid.

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land, subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall, in the first case, within three months after the passage of the same, and in

the last, within thirty days next after the date of such settlement, file, with the Register of the proper district, a written statement describing the lands settled upon, and declaring the intention of such person to claim the same under the provisions of this act, and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment, within the twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

Approved September 4, 1841.

GENERAL LAND OFFICE,
November 25, 1841.

GENTLEMEN:—In the instructions of 15th September last, an omission was made in not referring to a class of pre-emptors provided for in the act of 4th of that month.

In the 1st paragraph, on the second page of that circular, the words, "*Where the land was subject to private entry at the date of the law, and a settlement shall thereafter be made upon such land or,*" were omitted before the first sentence of that paragraph. They should have been inserted so as to have made that paragraph read, "Where the land was subject to private entry at the date of the law, and a settlement shall *thereafter* be made upon such land, or where the land shall hereafter become subject to private entry, and *after that period a settlement shall be made*, which the settler is desirous of securing under this act, such notice of his intention must be given within *thirty days* after the date of such settlement."

The word "both," in the 4th line, on the second page, should be "all;" and the word "case," in the 9th line, of the same page, "cases."

A number of copies of this page will be furnished for the purpose of being attached to the circular of the above date, after the 10th page.

I am, very respectfully, gentlemen,
Your obedient servant,
(Signed) E. M. HUNTINGTON,
The Register of the Land Office, and Reciever of Public Moneys.
Land Office at

GENERAL LAND OFFICE,
September 28*th*, 1842.

GENTLEMEN:—The act of Congress of the 26th August last, entitled "An act to confirm the sale of public lands in certain cases,"

contains the following declaration, viz: "*That the act of fourth September, eighteen hundred and forty-one, entitled 'An act to appropriate the proceeds of the sales of public lands, and to grant pre-emption rights,' shall be so construed as not to confer on any one a right of pre-emption by reason of a settlement made on a tract heretofore sold under a prior pre-emption law, or at private entry, when such prior pre-emption or entry has not been confirmed by the General Land Office, on account of any alleged defect therein, and when such tract has passed into the hands of an innocent and bona fide purchaser.*"

No entry will, therefore, be permitted, by virtue of the act of 4th September, 1841, of any tract of land sold prior to 26th August last, whether by pre-emption or private entry, where such entry has been rejected by this office; provided, the land so purchased has, prior to that time, "passed into the hands of an innocent bona fide purchaser."

All transfers or assignments to third persons are presumed to be to "innocent and bona fide purchasers," unless the contrary is shown by satisfactory evidence.

The books and plats of your office will show whether a sale of the land by the Government has been made; and where the records or papers do not exhibit evidence of a transfer or assignment from the original purchaser to another person, information must be sought and had from this office before permitting a claimant, under the act of 4th September, 1841, to enter the land so sold.

The experience of this office as to the operation of the act of 4th September, 1841, during the past year, seems to require the additional instructions subjoined.

You will require of every claimant *satisfactory proof* that he had not left his "own land in the same State or Territory" to make the settlement by virtue of which he claims a right under the act of 4th September, 1841.

Lands subject to private entry, at the time of the settlement thereon, cannot be entered by the settler under the law of 4th September, unless he shall file a declaratory statement, such as the 15th section of the act requires, and in due time produce the necessary proof of his right, and make the affidavit required by the law. Where such settler, instead of entering the land, as he might, at private entry, elects to enter the same under the provisions of the law of 4th September, 1841, (whereby he obtains a year's time from the date of the settlement to make the payment,) he is bound to comply with *all* the requirements of that law. A failure to do so, in regard to any of these requirements, renders the land subject to the entry "of any *other* purchaser,"* *and any person so failing is positively debarred by the law from the privilege of making a private*

entry of the same, under any pretence. Instances have been made known where persons filed the declaratory statement, as required, without any improvements having been made, merely with a view of keeping the land from being entered by any other person for a year, intending, near the expiration of that time, to abandon their pretended pre-emption claim, and enter the same at *private entry.* The consummation of all such cases must be prevented, and this can be done by requiring a rigid compliance with all the provisions of the law, as above directed. A claimant is bound to provide his right to, and enter, *all* the land embraced by his declaratory statements, if liable to the operation of the act.

Declaratory statements are required only † "for land subject to private entry" at the time of settlement, and they should not be received, filed, or reported to this office, if presented for any other land, nor should they be received for forty acre* lots, unless they are "*residuary*" ones, such minor sub-divisions, with the exception of residuary† tracts, not being liable to the operation of the act of 4th September, 1841. The law provides only for settlements made *since* June 1st, 1840. Where, therefore, parties have made settlements *prior* to that time, and have not availed themselves of the privileges of the pre-emption act of 1st June, 1840, their own neglect has deprived them of any right of pre-emption founded on such settlements.

The proof filed by *every* claimant must show the *time*‡ *of the commencement of the settlement*, as required by the first par., 5th page of the instructions of 15th September, 1841.

The affidavit of the claimant, required by the 13th section of the act, *must* be taken "before the *Register* or *Receiver* of the land district in which the land is situated" before an entry is permitted, and must be of the same date with the certificate of entry. An affidavit *before any other person* will not justify your permitting the entry of the land claimed.

To entitle a claimant to the benefits of the act of the 4th September, 1841, it is necessary that he should have been either a citizen of the United States, or have filed his declaration of intention to become a citizen, *at the time of the settlement* upon which his claim is based.

The law confers only on the *first* settler the right of pre-emption. The question of priority will, in all cases, be decided by you; and, where an appeal from such decision is taken, you will transmit to this office, for reference to the Secretary of the Treasurer, (Interior,) the evidence filed by all the parties claiming the said land, with a brief reference to the grounds of your decision.

The action of the Secretary of the Treasurer (Interior) will be reported to you, and then the entry can be made by the person in

whose favor the decision may be, on the Secretary's revision of the case.

Very respectfully, gentlemen,
Your obedient servant,
THO. H. BLAKE,
Commissioner.

The Register of the Land Office and Receiver of Public Moneys, at

NOTES.

* Page See proviso to 9th section, act of 3d March, 1853, Circular of 8th May, 1843.

† Page Since the date of this circular, the act of 3d March, 1843, has been passed, the 5th section of which requires similar declaratory statements for "unoffered land." See Circular of the 8th May, 1843.

* Page By act of 8th May, 1846, forty-acre tracts, whether of "offered" or "unoffered" land, are rendered subject to pre-emption. See Circular of 14th May, 1846.

† Page Where an entry has been made of one forty-acre lot *of a legal eighty-acre sub-division*, in virtue of the Act of 5th April, 1832, entitled "An Act supplementary to the several laws for the sale of the Public Lands," the *contiguous* forty-acre lot of such legal sub-division is called the "residuary quarter *quarter.*"

‡ Page The date is all-important for the purpose of determining, in *all cases*, whether the settlement was made within the proper time; and in those where the declaratory statement is required, whether such statement was filed in due season, and the entry made within the legal period after the settlement.

GENERAL LAND OFFICE,
May 8, 1843.

GENTLEMEN:—Annexed is a copy of an Act of Congress, approved on the 3d March last, "to authorize the investigation of certain alleged frauds under the pre-emption laws, and for other purposes."

Wherever the time prescribed for making proof and payment on a claim, by the law under which it originated, has expired, the provisions of the present act do not apply.

The *first* section of the act, being of special application to a single land district, has been acted on accordingly.

The *second* provides for the rights of parties who shall have died before consummating their claims by the filing, in due time, of all the papers essential to establish the same. Under it you are authorized, if proof of such right shall be filed and payment therefor be made by the *executor, administrator, or one of the heirs, during the period prescribed by the law upon which the claim is founded,*

to permit the entry in the name of "the heirs" of the deceased claimant. A patent on such an entry will cause the title to inure to said heirs, as if their names had been specially mentioned. In cases of this kind, the affidavits required of the pre-emptor by the acts of June 22d, 1838, June 1, 1840, and September 4, 1841, respectively, will be taken by the person so filing the proof; and should such person be one of the heirs, he or she should be of age and mind competent to appreciate the nature and obligation of an oath. (Forms for such affidavits are hereto annexed, marked A and B.)

The *third* section provides for cases *under all the previous pre-emption laws*, except that of September 4, 1841, where the settlement was made on *unsurveyed land*, and is subsequently discovered to interfere with *section sixteen*, reserved for schools, or with a *tract reserved* for any *other purpose*, or with a tract covered by a *private claim*. It admits the settler thus circumstanced to enter any other *quarter section*, or *fractional section*, or *fractional quarter section*, in the same land district, so as *not to exceed one hundred and sixty acres* of land, not reserved from sale or in the occupancy of any other bona fide settler.

Under the third section of the act of 1st June, 1840, settlers within the purview of the act of 1838 or 1840, who resided on a sixteenth section reserved for schools, did enjoy the right of locating "*a quarter section*" anywhere else in the same land district, to which no other person had "*a right of pre-emption.*" The present act, in extending to such settlers on a sixteenth section the increased privilege of locating at their option other *species of tracts*, viz:—"*fractional* section," or "*a fractional quarter section*," restricts the previous privilege of location to *vacant* and *unimproved* land. No location is to be allowed by you under this section of the act, unless upon the filing of satisfactory proof that the substituted land is not in the occupancy of any bona fide settler, which testimony, with the other papers in the case, you will transmit to this office. (See Note I.)

The *fourth* section declares it unlawful for an individual who has once filed a declaration for one tract of land, to file at any future time a second declaration for another tract. This has reference to those required, under the 15th section of the act of 1841, for land subject at the time of settlement to entry *at private sale*. Your record of such declarations will afford you some means of detecting a violation of this provision; and whenever you do detect it, by any means whatever, you are to refuse to receive or notice the same; and if such declaration shall have been received, and reported to this office before the discovery is made, such fact will not prevent your regarding the land as subject to the entry of the first applicant, in the same manner as if no declaration had been filed.

The *fifth* section requires that similar notices or declarations, in writing, should be filed by settlers under the act of 4th September, 1841, on land *not subject to private entry*. These declarations are to be filed in your office, by every such settler, within *three months after his settlement*, except as to those whose settlements were made prior to the 3d March last; in which cases such declarations are to be filed within *three months from that date*, viz: before the 3d of June next. The Register will number such statements regularly in the order of their date of reception, enter them in a suitable book prepared therefor, furnish this office with monthly abstracts from said book, and in all other respects pursue the same course in relation to them as he is required to do by the 3d and 4th paragraphs on the 2d page of the Circular of 15th September, 1841, in regard to the declarations therein referred to. Particular care must be taken not to confound the two species of declarations, but to keep separate files thereof, enter them in the respective books prepared for each, and in the monthly abstracts transmitted to this office, discriminate between the two, by heading the one, "For land subject to private entry;" and the other, "For land not yet offered for sale." (A form for a declaration under this section of the act is hereto appended, marked C.)

By the *sixth* section provision is made for the benefit of claimants, whose rights might otherwise be jeoparded by reason of a vacancy which has occurred, or may hereafter occur, in either of your offices, or both. By it a claimant is authorized hereafter to file a declaration, under the law of 4th September, 1841, or to make an entry of a claim under any of the pre-emption laws, although the time prescribed by the law for the filing of such declaration, or the making of such entry, shall have expired; provided, the claimant was prevented by such vacancy from performing said act or acts within such time, and shall perform the duties required by the law within the *same period* after the disability is removed, as he would have had if such vacancy had not occurred. (See Note II.)

The *seventh* section extends the privileges given to one class of claimants under the act of 22d June, 1838, by the 1st section of the act of 1st June, 1840, to another class of claimants under the same law. In future, a settler who shall have resided, on the 22d June, 1838, and for four months next preceding, on a *quarter section*, a *fractional quarter section*, or *a fraction of a section less than one hundred and sixty acres*, and have cultivated land on any other and different tract of either of the descriptions above mentioned, such settler is entitled to a choice between the tract resided on and the tract cultivated, or legal subdivisions of each, to include his or her house and farm, so as not to exceed one hundred and sixty acres, upon filing the requisite proof and making payment for the land claimed, within the period prescribed by law. This extension of benefits

is made to *single* settlers, and to those only whose settlements were made at the period required by the act of 22d June, 188 ; it does not apply to settlements made since 22d June, 1838, and prior to 1st June, 1840. (See note III.)

The *eighth* section modifies the first proviso of the act of 22d June, 1838, applicable as well to claims under that act as to those under the act of 1st June, 1840. In future, where two or more were residing on a *quarter section*, *fractional quarter section*, or *fraction of a section less than one hundred and sixty acres*, at the period required by the act of 22d June, 1838, or that of 1st June, 1840, and any one or more of such residents were cultivating, during the same period, on another and different tract, or other and different tracts, the persons so cultivating have the option of entering the tract lived on, *jointly* with the other or others, or of abandoning the tract lived on to those who have not cultivated, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler so cultivating. Where the persons cultivating do not abandon the tract resided on, a *joint entry* by *all* the residents may be made of such tract and other "*contiguous unoccupied lands*, by legal subdivisions," to the ex tent of as many times one hundred and sixty acres, in the whole, as there are residents on the first-mentioned tracts entitled under the same law. Where the cultivator or cultivators abandon the tract resided on to the other residents, the former are entitled to make a separate entry of the tract, or separate entries of the tracts cultivated, not to exceed one hundred and sixty acres to any one settler, and the latter have no claim to any land in addition to that resided on. In cases under this section of the act, each cultivator must file separate proof of his right, so as to enable you to file the same with the separate entry of such cultivated tract. The "contiguous" unoccupied land referred to in this section of the act. is to be understood as land separated from the tract resided on by a line only, not land in the neighborhood, as near as may be ; and where there is no such contiguous land, by reason of its being rightfully claimed by or in the occupation of others, the right fails. Such *contiguous* land is to be embraced in the same certificate with the land on which the claimants reside.

The proviso to this eighth section limits the extended privileges given by the act. It may, therefore, happen that a tract *other than a quarter section* may be claimed (under the provisions of the 7th and 8th sections of this act) by virtue of its cultivation during the period required by the act of 22d June, 1838, where the same tract is claimed by a *resident* thereon under the act 1st June, 1840, or under that of 4th September, 1841 ; or it may be the subject of conflict between a cultivator at the time required by the act of 1st June, 1840, (under the eighth section of this act,) and a *resident* under the act of 4th of September, 1841. In all such cases, the first-men-

tioned claims, which would otherwise exist under this act, must yield to the "previous and paramount right of pre-emption," founded on the provisions of law existing at the date of this act. (See note IV.)

By the *ninth* section you are authorized to permit the entry of a claim under the act of 4th September, 1841, although it may be for land *not surveyed* at the time of the settlement, where such settlement was made *prior* to the 4th September, 1841, and *after the extinguishment* of the Indian title. The object of this, it will be seen, is to modify the provisions of the act of 1841 so far as to remove from claims under it the fatal objection of being founded on a settlement made *before* the survey, provided such settlement was made *prior* to the 4th September, 1841. The concluding paragraph of the ninth section renders inoperative the construction placed by this office upon the latter part of the fifteenth section of the act of 4th September, 1841. That portion, therefore, of the last paragraph on the 1st page of Circular of 28th September, 1842, which relates to this subject, is annulled; and you are instructed to permit a person who has filed, or shall hereafter file, according to law, a declaratory statement for a tract of land *subject to private entry*, to enter the same *after* the twelve months from the time of his settlement shall have expired, without filing any proof of his right as a pre-emptor, provided he is the first applicant, after that time, for the entry of the same at private sale. (See note V.)

I am, very respectfully,
Your obedient servant,
THO. H. BLAKE,
Commissioner.

NOTE I.

(The pages herein referred to will be found in part I, "Laws, Instructions, and Opinions.)

Claims under this third section may arise under the act of 5th February, 1813, (page 225,) and the fifth section of the act of 12th April, 1814, (page 244,) inasmuch as those laws are yet operative on land (to which the Indian title was extinguished at their respective dates) situated in a township *not yet offered for sale*, and which land is within the bounds of the then Territories of Illinois and Missouri, and that part of the State of Louisiana which composed the theretofore Territory of Orleans. The proof and payment, under these acts, were not required to be made until *two weeks prior to the commencement of the public sale.*

Claims may also arise under act of 29th May, 1830, (page 473,) the proviso to the act of 5th April, 1832, (page 494,) the act of 19th June, 1834, (page 525,) the act of 22d June, 1838, (page 574,) and the act of 1st June, 1840, entitled "An act supplemental to the act entitled an act to grant pre-emption rights to settlers on the

public lands," approved June 22d, 1838," inasmuch as the five last-mentioned acts, the first, third, fourth, and fifth, by virtue of the act of 14th July, 1832, (page 510,) and the second, by virtue of the act (page 521,) of 2d March, 1833, are operative on land subject to pre-emption at their respective dates, where the plats have not yet been returned to your office, or, being so returned, the year subsequent thereto shall not have expired when the claim is preferred.

The third section of the act of 27th February, 1815, (page 257,) the third section of the act of 3d March, 1819, (page 312,) and the third section of the act of 1st June, 1840, (as explained in the body of this circular,) all provided for settlements on school lands made by claimants at the periods required by acts of 1813, 1814, 1838, and 1840, before referred to; but these provisions are now all merged in this third section of the act of 3d March, last, and all future locations are to be made in accordance with its provisions.

NOTE II.

The fifteenth section of the act of 4th September, 1841, requires that the declarations therein referred to shall be filed within *thirty* days after the settlement, and the proof and payment made within *twelve months* after such settlement.

The fifth section of the act of 3d March last requires the declarations, in cases to which it has reference, to be filed within *three months after the date of the act* where settlement was made *prior* to the 3d March last, or *three months after the settlement* where it shall be made *subsequent* to said 3d March, and the proof and payment may be made at any time before the *commencement of the public sale* which shall embrace the land claimed.

NOTE III.

The first section of the act of 1st June, 1840, gave to a settler under the act of 22d June, 1838, residing on one "*quarter section*" and cultivating land on another and different "*quarter section*," the right of entering either of said quarter sections, or legal subdivisions of each, not to exceed one hundred and sixty acres. This privilege embraced only *single settlers* on such tracts, namely, where but *one* settler was residing on one and cultivating the other of such tracts, because only in such cases could the choice given be exercised. This section extends a similar privilege to such *single* settlers, under act of 1838, on other tracts than a "quarter section," but has omitted to provide for like cases under act of 1st June, 1840.

NOTE IV.

The first proviso of the act of 22d June, 1838, declares that "where more than one person may have settled upon and cultivated

any one quarter section of land, each one of them shall have an equal share or interest in the said quarter section, but shall have no claim, by virtue of this (said) act, to any other land." This proviso was not affected by the first section of the act of 1st of June, 1840, that referring only to *single* settlers on a *quarter section*. (See note III.) It is now entirely superseded, in regard to future cases, under acts of 1838 and 1840, where there are two or more settlers on the same quarter section, by the eighth section of the act of 3d March last, which not only gives extended privileges to such settlers under either of said acts on a *quarter section*, but makes provision for like settlers on *other tracts* than a quarter section.

NOTE V.

The act of 4th September, 1841, conferred no right where the settlement was made on land to which the Indian title had not been extinguished, and which was not, also, surveyed at the time of such settlement.

The latter part of the fifteenth section of the act of 4th September, 1841, provided, that a failure on the part of a claimant, under that section, to do any of the acts required thereby, should render the land subject to the entry "of any other purchaser." The Circular of 28th September, 1842, directed such a construction of this latter clause to be observed by the land officers as would prevent such a claimant from coming forward to enter, at private sale, land previously claimed by him as pre-emptor, after keeping it for twelve months from being purchased by any one else. He had elected to take it as a pre-emptor, and, as such, was bound, under that law, to prove his right; and it was believed that Congress, in declaring the land subject to the entry of "any other purchaser," should he fail to make good his right of pre-emption, expressly designed to exclude him in consequence of his neglect or inability to show the truth of his declaratory statement by which the land was for twelve months withheld from being sold to any other person.

FORM A.

Affidavit to be filed in cases (under act of 22d June, 1838, or 1st June, 1840,) where the settler shall have died before proving up and entering his claim.

I, A B, (executor of the estate of C D, or administrator of the estate of C D, or one of the heirs of C D, aged years, as the case may be,) do solemnly swear (or affirm, as the case may be,) that said C D, to the best of my knowledge and belief, entered upon the quarter of section number , of township number , of range number , subject to sale at , in his own right, and exclusively for his own use and benefit; and that he has not, directly or indirectly, made any contract or agreement, in any way or man-

ner, with any person or persons whatever, by which the title to the land, which he might have acquired from the Government of the United States by virtue of said settlement, under the law of 22d June, 1838, (or June 1st, 1840, as the case may be,) should inure to the use or benefit of any one except himself, or to convey or transfer the said land, or the title which he might have acquired to the same, to any other person or persons whatever at any subsequent time.

A B, executor of the estate of C D, (or administrator of the estate of C D, or one of the heirs of C D, as the case may be.)

Sworn to and subscribed before me, this day of A. D. 185 .

E F, Register, or
G H, Receiver, or
J K, Justice of the Peace.

FORM B.

Affidavit to be filed in cases (under act of 4th September, 1841,) where the settler shall have died before proving up and entering his claim.

I, A B, (executor of the estate of C D, or administrator of the estate of C D, or one of the heirs of C D, aged years, as the case may be,) do solemnly swear (or affirm, as the case may be,) that, to the best of my knowledge and belief, the said C D, who was a settler on the quarter of section number , of township number , of range number , subject to sale at , has never had the benefit of any right of pre-emption under the act entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," approved September 4, 1841; that he was not, at the time of his death, the owner of three hundred and twenty acres of land in any State or Territory of the United States; that he did not settle upon and improve the above tract of land on speculation, but, in good faith to appropriate it to his own exclusive use and benefit; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might have acquired from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.

(Signed,) A B,
Executor, (or Administrator, or one of the heirs of C D, as the case may be.)

I, E F, Register (G H, Receiver) of the Land Office, at , do hereby that the above affidavit was taken and subscribed before me, this day of , A. D. 185 .

(Signed,) E F, Register, or
G H, Receiver.

FORM C. (c.)

Declaratory statement for cases where the land is not subject to private entry.

I, A B, of , (being the head of a family, or widow, or single man over the age of twenty-one years, as the case may be, a citizen of the United States, or having filed my declaration to become a citizen as required by the naturalization laws, as the case may be,) did, on the day of , A. D. 185 , settle and improve the quarter of section number , in township number , of range number , in the district of lands subject to sale at the land office at , and containing acres, *which land has not yet been offered at public sale, and thus rendered subject to private entry*; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under the provisions of said act of 4th September, 1841.

Given under my hand, this day of , A. D., 185 .

(Signed,) A. B.

In presence of

C D.

AN ACT

To authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States, in Congress assembled, That the Commissioner of the General Land Office be and he hereby is authorized to appoint a competent agent, whose duty it shall be, under direction of said Commissioner, to investigate, upon oath, the cases of fraud under the pre-emption laws alleged to exist in the Columbus Land District, in the State of Mississippi, referred to in the late annual report of said Commissioner, communicated to Congress by letter of the Secretary of the Treasury, dated December the fifteenth, one thousand eight hundred and forty-two; and that such agent shall examine all witnesses who may be brought before him by the individual or individuals alleging the fraud, as well as those witnesses who may be produced by the parties in interest to sustain said claims; and that he be and is hereby invested with power to administer to such witnesses an oath to speak the truth in regard to any question which may be deemed necessary to the full examination of the cases so alleged to be fraudulent; and such testimony shall be reduced to writing, and subscribed by each witness, and the same returned to the Commissioner, with the opinion of said agent on each claim; and any witness, so examined before the said agent, who shall swear willfully and falsely in regard to any matter or thing touch-

ing such examination, shall be subject, on conviction, to all the pains and penalties of perjury; and it shall be the duty of the Commissioner to decide the cases thus returned, and finally to settle the matter in controversy, subject alone to an appeal to the Secretary of the Treasury: *Provided*, That the power conferred by this section upon such agent is hereby limited to the term of one year from and after the date of this act; and the compensation to be paid to said agent shall not exceed three dollars per day for each day he may be necessarily engaged in the performance of the duties required by this section.

SECT. 2. *And be it further enacted*, That in any case where a party entitled to claim the benefits of any of the pre-emption laws, shall have died before consummating his claim by filing, in due time, all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same: *Provided*, That the entry in such cases shall be made in favor of "the heirs" of the deceased pre-emptor, and a patent thereon shall cause the title to inure to said heirs, as if their names had been specially mentioned.

SECT. 3. *And be it further enacted*, That every settler on section sixteen, reserved for the use of schools, or on other reserves or land covered by private claims of others, which was not surveyed at the time of such settlement, and who shall otherwise come within the provisions of the several pre-emption laws in force at the time of the settlement, upon proof thereof before the Register of the proper land office, shall be entitled to enter, at the minimum price, any other quarter-section, or fractional section, or fractional quarter-section, in the land district in which such school section, or reserve, or private claim may lie, so as not to exceed one hundred and sixty acres, not reserved from sale or in the occupancy of any actual bona fide settler: *Provided*, such settlement was made before the date of the act of fourth September, eighteen hundred and forty-one, and after the extinguishment of the Indian title.

SECT. 4. *And be it further enacted*, That where an individual has filed, under the late pre-emption law, his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual, at any future time, to file a second declaration for another tract.

SECT. 5. *And be it further enacted*, That claimants under the late pre-emption law, for land not yet proclaimed for sale, are required to make known their claims, in writing, to the Register of the proper land office, within three months from the date of this act, when the settlement has been already made, and within three months from the time of the settlement, when such settlement shall hereafter be made, giving the designation of the tract and the time of settlement; otherwise his claim to be forfeited, and the tract

awarded to the next settler, in the order of time, on the same tract of land, who shall have given such notice, and otherwise complied with the conditions of the law.

SECT. 6. *And be it further enacted*, That whenever the vacancy of the office either of Register or Receiver, or of both, shall render it impossible for the claimant to comply with any requisition of any of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming in respect to any matter essential to the establishment of his claim: *Provided*, That such requisition is complied with within the same period after the disability is removed as would have been allowed him had such disability not existed.

SECT. 7. *And be it further enacted*, That where a settler on the public lands may reside on a quarter-section, a fractional quarter-section, or a fraction of a section less than one hundred and sixty acres, and cultivated land on any other and different tract of either of the descriptions aforesaid, he or she shall be entitled, under the act of June twenty-two, one thousand eight hundred and thirty-eight, to the same privileges of a choice between two legal subdivisions of each, so as to include his or her house and farm, not to exceed one hundred and sixty acres in all, as is granted by the first section of that act to settlers residing on a quarter-section, and cultivating on another and different quarter.

SECT. 8. *And be it further enacted*, That where two or more persons are residing on any of the species of tracts specified in section seven of this act, as required by the acts of the twenty-second of June, one thousand eight hundred and thirty-eight, and first of June, one thousand eight hundred and forty, and any one or more of said settlers may have cultivated land during the period of residence required by either of said acts on another and different tract, or other and different tracts, the latter mentioned settlers shall be entitled to the option of entering the tract lived on, jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated land as above required, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler, who, by virtue of this section, is entitled to a separate entry; or such joint settlers may jointly enter the tract so jointly occupied by them, and, in addition, enter other contiguous unoccupied lands, by legal subdivisions, so as not to exceed one hundred and sixty acres in all to each of such joint settlers: *Provided*, That the extended privileges granted to pre-emptors by this act shall not be construed to deprive any other actual settler of his or her previous and paramount right of pre-emption, or to extend to lands reserved for any other purpose whatever.

SEC. 9. *And be it further enacted*, That all persons coming within the tenth section of the act of the fourth of September,

eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," shall be entitled to the right of pre-emption under its provisions, notwithstanding such persons claiming the pre-emption shall have settled upon and improved the lands claimed before the same were surveyed; *Provided*, such settlements were made before the date of the aforesaid act, and after the extinguishment of the Indian title; and said act shall not be so construed as to preclude any person, who may have filed a notice of intention to claim any tract of land by pre-emption, under said act, from the right allowed by law to others to purchase the same by private entry after the expiration of the right of pre-emption.

Approved March 3, 1843.

GENERAL LAND OFFICE,
May 14, 1846.

GENTLEMEN:—Enclosed I send you a copy of an act entitled "An act to repeal a part of the act entitled 'An act supplementary to the several laws for the sale of the public lands,' approved April fifth, one thousand eight hundred and thirty-two," and for other purposes, approved May 8th, 1846.

Under the provisions of this act, forty acre tracts, or quarter-quarter sections, are subject to entry, selection, or location, precisely in the same manner that eighty-acre tracts, or half-quarter sections, have heretofore been; consequently the affidavits for the entry of quarter sections, heretofore required, will now be dispensed with; and it will no *no* longer be necessary to note these entries on the returns, as being under the act of fifth April, 1832. All lands, however, will be offered at *public sale*, in half-quarter sections, or eighty-acre tracts, as heretofore.

Very respectfully your obedient servant,
(Signed,) JAMES SHIELDS,
Commissioner.

Register of the Land Office and Receiver of Public Moneys at

AN ACT

To repeal a part of the act entitled "An act supplementary to the several laws for the sale of the public lands," approved April fifth, one thousand eight hundred and thirty-two, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passage of this act, the second proviso to the act entitled "An act supplementary to the several laws for the sale of the public lands," approved April fifth, one thousand eight hundred and thirty-two, which is as follows, viz: "That no person shall be permitted to enter more than one-half quarter section of land, under this act, in quarter-quarter sections in his own name, or in the name

of any other person, and in no case, unless he intends it for cultivation or for the use of his improvement; and the person making application to make an entry under this act shall file his or her affidavit, under such regulations as the Secretary of the Treasury (Interior) may prescribe, that he or she makes the entry in his or her own name, for his or her own benefit, and not in trust for another," shall be and the same is hereby repealed; and all entries, selections, or locations of lands now suspended in the General Land Office, because made contrary to the restrictions in this proviso, shall be and they are hereby confirmed, provided they are in all other respects fair and regular.

Approved May 8, 1846.

(Endorsed.)
Offered by Def't, Doc. L. H., No. 12.
Filed October 7th, 1858.
(Signed) C. ST. MARTIN,
Clerk.

DOCUMENT L. H., No. 16.

Act of Congress of 2d August, 1856.

Introduced by Defendant at page 145.

34th Congress,
1st Session. S. 377.

IN THE HOUSE OF REPRESENTATIVES,
August 2, 1856.

Reported from the Committee on Private Land Claims, with an amendment, viz: insert the parts in *italics*, and committed to a Committee of the Whole House.

AN ACT

For the relief of Ambrose Lanfear, of Louisiana.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the surveys of claim number seventy-four, known as the claim of the children of Paul Toups, and of claim number five hundred and twenty-nine, known as the claim of Daspit St. Armand, executed by Maurice Hanke, United States Deputy Surveyor, and approved of by William J. McCulloh, United States Surveyor-General for the State of Louisiana, on the fifth day of May, eighteen hundred and fifty-five, be and the said surveys are hereby confirmed in favor of Ambrose Lanfear for the land embraced within the said surveys hereby confirmed; *Provided,* That such confirmation shall only be construed into a relinquishment of title on the part of the United States, and shall not affect the rights of any third person claiming title

either under adverse title or as pre-emption; *And provided further, That any person or persons, who are now settled on the said lands, or any portion of the lands embraced in the said surveys, shall be entitled to have and maintain an action to test* the validity of said surveys and the extent of the said claims of the children of Paul Toups, and of Daspit St. Armand, numbers seventy-four and five hundred and twenty-nine, and to have the same determined judicially in the same manner as though the land on which they are settled had been surveyed as public land, and they had been permitted to enter the same by way of pre-emption, it being the true intent and meaning of this act that no person, who would be now entitled to a right of pre-emption to any part of the said land, if the same were the property of the United States, shall be deprived of the same, unless it is judicially decided that the said surveys were made in conformity with the legal right of the said Ambrose Lanfear, under the said confirmation.

Passed the Senate, July 14, 1856.

Attest: ASBURY DICKINS,
Secretary.

(Endorsed.)

S. 377.

AN ACT

For the relief of Ambrose Lanfear, of Louisiana.

August 2, 1856. Reported from the Committee on Private Land Claims, with an amendment, viz: Inserts the parts in *italics*, and committed to a Committee of the Whole House.

Doct. L. H. No. 15.

Filed 7th October, 1858.

(Signed) C. ST. MARTIN,
Clerk.

PROCEEDINGS IN THE SUPREME COURT.

Admissions of Counsel.

At the trial of the case of Lanfear *vs.* Hunley et al., in the lower Court, the following admission was made by the counsel for plaintiff, as well for the benefit of Hunley as the co-defendants whose cases were consolidated with this.

"It is admitted that the defendants made their settlements at the time specified in the certificate of the Register of U. S. Land Office, offered in evidence; that they have since resided on the land on which they settled, and continued to reside on the same, and have

complied in every respect with the pre-emption laws of the United States, and are fully qualified settlers."

This admission having been, through error, omitted in the transcript, it is agreed that it be now made and considered a part of the record filed in this case in the Supreme Court.

Dec. 15th, 1859. (Signed) HENRY ST. PAUL,
Attorney for A. Lanfear.

(Signed) PIERRE SOULÉ, *for Defendants.*

6,045.
LANFEAR
vs.
HUNLEY.

Supreme Court.
Filed December 20th, 1859.
(Signed) EUGENE LASERE,
Clerk.

PROCEEDINGS IN THE SUPREME COURT.

CAUSE ARGUED, AND ORDER.

Supreme Court of the State of Louisiana.

The Court met Tuesday, December 20th, 1859.

Present their Honors, E. T. Merrick Chief Justice, Thos. T. Land and Albert Voorhies, Associate Justices.

Their Honors, A. M. Buchanan and J. L. Cole are absent.

AMBROSE LANFEAR, App't.
6,045. *vs.*
H. L. HUNLEY, App'ee.

This case was this day argued by H'y St. Paul, Esq., of counsel for plaintiff and P. Soulé, Esq., of counsel for defendant.

OPINION AND DECREE.

Supreme Court of the State of Louisiana.

The Court met Monday, January 23d, 1860.

Present their Honors, E. T. Merrick Chief Justice, A. M. Buchanan, Thos. T. Land and Albert Voorhies Associate Justices.

AMBROSE LANFEAR, App't.
6,045. *vs.*
H. L. HUNLEY, App'ee.

Appeal from the Third Judicial District Court of the Parish of St. Charles.

In this cause Mr. Chief Justice Merrick this day delivered the opinion of the Court in writing, in the words and figures following:

For the reasons given by the District Judge the judgment in this case is affirmed.

(Reasons of the District Judge.)

The difference between this case and that of Lanfear *vs.* "The G. W. & O. R. R. Co., and Long, and als.," which was decided by this Court in favor of the plaintiff, is in this fact, that the settlements of defendants in the former case were located in the south side of

Bayou Crocodile, whilst that of the present defendants is on the north side of said bayou.

A. Lanfear claims all that portion of land commencing at the back of his plantation, extending as far as Bayou des Cannes and represented on the plan of McCulloh, Surveyor-General, as the claim of the children of Paul Toups and that of A. Daspit St. Amand. Plaintiff has succeeded, through sundry conveyances, to the rights of Paul Toups and of St. Amand, whose claims were confirmed by Congress in 1812 and 1820.

In the judgment rendered by this Court, in the case above referred to, the Court recognized the rights of Lanfear to all the land south of Bayou Crocodile from the crossing of said bayou down to Bayou des Cannes. It is now necessary to examine whether the grant of Baron de Carondelet to Paul Toups extended north of Bayou Crocodile, where the present defendant has his settlement.

In his request to Baron de Carondelet, Paul Toups states, "that owing to considerable losses on account of short crops, death of slaves, etc., he has become involved in debts which he cannot pay, except by the sale of his plantation, which constitutes his sole means of supporting his family; wherefore he prays for a grant of land on the place called '*Les Coteaux de France*,' at a distance of about eleven leagues from the capital, and about three and a half leagues from the river, on the other (right) bank, reaching to a bayou named Crocodile, (arrivant a un bayou nommé Crocodile,) which runs parallel with the river, and the said land to be taken from the crossing of said bayou as far as the large swamp on the other side of Bayou des Cannes, the whole forming a strip of land about 16 or 18 arpents wide, and about two leagues and a half long, bounded on one side by floating prairies and on the other by lakes and marshes." Such is the description of the grant which Paul Toups wished to obtain from the Spanish Government. His requete defines clearly the starting point as well as the limit of the grant. It commences at the crossing of Bayou Crocodile and ends at the large swamp on the other side of Bayou des Cannes.

This case would, therefore, be free of all difficulties if it was not argued by plaintiff that the Bayou Crocodile, referred to in the requête, is not the one so called in the survey, and that the one referred to by Paul Toups is the one which in the survey is called Petit Bayou.

In this report Mr. J. W. McCulloh, Gen. Surv., says, that Bayou Crocodile are known throughout Louisiana, and, says he, it is proved in this case that the location of Toups covers three streams of that name.

We have not the benefit of such evidence.

The plan on file shows but one bayou of that name, and there are several reasons for which we consider it as the one referred to by Paul Toups.

1st. It is the one which runs parallel with the Mississippi, with

the exception of those designated on the plan by the names of Bayou des trois Fourches, Bayou Saut D'Ours, and Bayou des Cannes, all three of which are far south of Bayou Crocodile.

2d. It is on that very Bayou Crocodile that Daspit St. Amand, who had purchased from the heirs of Paul Toups, had built a bridge and erected a fence, making it himself the starting-point of his vacherie.

3d. That portion of the "Coteaux de France," comprised between Bayous Crocodile and Des Cannes, is the only one that can answer the description in the requete and order of survey, as being bounded on one side by floating prairies and on the other by lakes and marshes.

It is true, that in confirming the grant of Paul Toups to the land comprised between Bayou Crocodile and Bayou des Cannes, we cannot find the length of 2½ leagues called for by the requete and order of survey. But when the boundaries are so clearly defined, we cannot disregard them and give preference to distance and measurement in the location of a grant.

As to Petit Bayou being the one meant by Paul Toups as Bayou Crocodile, we consider as inadmissible: it does not run parallel with the river, but on the contrary, runs at right angles with it.

Instead of being 3½ leagues from the river, it is but little over 80 arpents from it.

Moreover, the *requete* asks for lands to be taken at the Coteaux de France, from the crossing of Bayou Crocodile, and we see that in no place does Petit Bayou cross the Coteaux de France; whilst Bayou Crocodile crosses it at the very point where St. Amand established his vacherie.

The confirmations by Congress, in 1812 and 1820, allowed no more to the children of Paul Toups and to Daspit St. Amand than had been granted by Baron de Carondelet; and the description of the grant in said confirmation is "of a tract of land situated in the County of Acadia, at the place called Les Coteaux de France, at about a distance of 3½ leagues from the western bank of the Mississippi."

This confirmation only recognizes the grant of the Spanish Government, but gives no more land to the grantees.

The two confirmations of 1812 and 1820, upon which plaintiff bases his present claim, are but one and the same grant, as appears clearly from the description of said grant.

Upon the whole, after a careful examination of this case, we have been forced to the conclusion, that the plaintiff, a successor of Paul Toups and Daspit St. Amand, has no title to the land making part of the Coteaux de France, situate north of Bayou Crocodile, and upon which defendant has acquired pre-emption rights.

The confirmation of 1856 to Ambrose Lanfear, contains an ex-

press reservation in favor of the settlers, authorizing them to test the validity of the surveys and the extent of the grant to Paul Toups and St. Amand; and there is an admission on record that H. L. Hunley had all the qualifications required by the United States to acquire under the pre-emption laws, and that the portion of land which he occupies is on the north side of Bayou Crocodile.

For the foregoing reasons, and the law and evidence being in favor of defendant, it is ordered, adjudged and decreed, that there be judgment in favor of said H. L. Hunley, and that plaintiff's demand be dismissed, with costs.

It is therefore ordered, adjudged and decreed, that the judgment of the Court below be affirmed, with costs.

Petition for a Writ of Error.

To the Honorable the Judges of the Supreme Court of the State of Louisiana.

The petition of Ambrose Lanfear, of the Parish of New Orleans, in the State of Louisiana,

Humbly showeth, That your Honorable Court has heretofore rendered a final judgment in the suit in which your petitioner Ambrose Lanfear is plaintiff and H. L. Hunley is defendant, and which is suit No. 6,045 of the Docket of this Court; that the said judgment was in favor of defendant and against your petitioner; that he is advised that there is error to his prejudice in said judgment; that this Court is the highest Court of Law and Equity in which a decision could be had in the aforesaid suit; that in said suit the validity of a statute of and authority exercised under the United States is drawn in question; that in said suit is furthermore drawn in question the construction of a clause of a treaty and of a statute of the United States, and the aforesaid judgment is against the right, title, and privilege specially claimed and set up under said treaty and statute: all of which appears on the face of the record of said suit, and that accordingly a writ of error lies from said final judgment to the Honorable Supreme Court of the United States.

The petitioner therefore prays, that a Writ of Error may be allowed to him, with a Citation to be served on the said H. L. Hunley defendant, and returned to the Supreme Court of the United States, upon his giving security as the law directs.

And, as in duty bound,

(Signed) HENRY ST. PAUL, and
A. ROBERT,
Attorneys for Petitioner.

ORDER.

Allowed on giving bond in the sum of five hundred dollars.

(Signed) E. T. MERRICK,
Chief Justice.

(*Endorsement.*)

No. 6,045. Supreme Court of the State of Louisiana.

Ambrose Lanfear *vs.* H. L. Hunley. Petition for a Writ of Error. Filed February 4th, 1860. (Signed.)

BOND FOR WRIT OF ERROR.

Know all men by these presents, That we, Ambrose Lanfear, principal, and Charles Joseph Daron, as surety, are held and firmly bound unto H. L. Hunley in the full and just sum of five hundred dollars, to be paid to the said H. L. Hunley, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourth day of February, in the year of our Lord one thousand eight hundred and sixty.

Whereas, lately, in the Supreme Court of the State of Louisiana for the Eastern District, in a suit depending in said Supreme Court, wherein Ambrose Lanfear is plaintiff and H. L. Hunley is defendant and appellee, judgment was rendered against the said Ambrose Lanfear, plaintiff; and the said Ambrose Lanfear, appellant, having obtained a Writ of Error, and filed a copy thereof in the Clerk's Office of the said Supreme Court, to reverse the judgment in the aforesaid suit, and a Citation directed to the said defendant and appellee, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next.

Now the condition of the above obligation is such, that if the said Ambrose Lanfear, appellant as aforesaid, shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) AMB'SE LANFEAR, [L. S.]
" CHAS. J. DARON, [L. S.]

Sealed and delivered in the presence of
(Signed) A. ROBERT.

Approved,

(Signed) E. T. MERRICK,
Chief Justice.

(*Endorsement.*)

Supreme Court of the State of Louisiana.
No. 6,045. Ambrose Lanfear *vs.* H. L. Hunley. Bond for Writ of Error.

Filed February 4th, 1860.

(Signed) F. A. FOYGNET,
Deputy Clerk.

WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss.*

The President of the United States

To the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the Eastern District of Louisiana,

GREETING:

Because, in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said Supreme Court, before you, or one of you, between Ambrose Lanfear and H. L. Hunley, a manifest error hath happened, to the great damage of the said Ambrose Lanfear, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record of proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fourth of February, in the year of our Lord one thousand eight hundred and sixty.

[L. S.] (Signed) J. W. GURLEY,
Clerk of the United States Circuit Court for Eastern District of Louisiana.

(ENDORSED.)

Supreme Court of Louisiana. No. 6,045.
Ambrose Lanfear *vs.* H. L. Hunley.
Writ of Error, No. 6,045.
Supreme Court of the State of Louisiana.
Filed February 4th, 1860.
(Signed) F. A. FOYGNET, *D'y Clerk.*

COPY OF WRIT OF ERROR.

UNITED STATES OF AMERICA, *ss.*

The President of the United States
To the Honorable the Judges of the Supreme Court of the State of Louisiana, holding sessions for the Eastern District of Louisiana,

GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court, before you, or one of you, between Ambrose Lanfear and H. L. Hunley, a manifest error hath happened, to the great damage of the said Ambrose Lanfear, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this fourth of February, in the year of our Lord one thousand eight hundred and sixty.

(Signed) J. W. GURLEY,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

(ENDORSED.)

Supreme Court of Louisiana. No. 6,045.

Ambrose Lanfear *vs.* H. L. Hunley.
Writ of Error.

Copy of writ of error lodged in the Clerk's Office of the Supreme Court of the State of Louisiana, for the Eastern District, in pursuance of the statute in such cases made and provided, this fourth day of February, 1860.

(Signed) A. ROBERT,
Attorney of Plaintiff in Error.

Filed February 4th, 1860.

(Signed) F. A. FOYGNET,
D'y Clerk.

CITATION IN ERROR.

THE UNITED STATES OF AMERICA.

The President of the United States

To H. L. Hunley, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington on the first Monday of December next, pursuant to a Writ of Error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, wherein Ambrose Lanfear is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edwin T. Merrick, Chief Justice of the Supreme Court of the State of Louisiana, this fourth day of February, in the year of our Lord one thousand eight hundred and sixty.

(Signed) EDWIN T. MERRICK.

No. 6,045. Supreme Court of the State of Louisiana.
Filed February 4th, 1860.

(Signed) F. A. FOYGNET,
D'y Clerk.

(ENDORSEMENT.)

Supreme Court of the State of Louisiana.
No. 6,045. Ambrose Lanfear *vs.* H. L. Hunley.
Citation in Error.

SHERIFF'S RETURN.

Received, New Orleans, February 13th, 1860, the within Citation in Error, and on the same day, month, and year, I served the same upon H. L. Hunley, defendant in error herein, by handing him a certified copy of the within citation, in person.

Returned the same day.

(Signed) JAMES STRAWBRIDGE,
Deputy Sheriff in and for the Parish of Orleans.

Filed February 13th, 1860.

(Signed) EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA.

SUPREME COURT, EASTERN DISTRICT,
State of Louisiana.

I, Eugene Lasere, Clerk of the Supreme Court of the State of Louisiana, for the Eastern District, do hereby certify that the above and foregoing three hundred and two pages contain a true copy of the transcript of the proceedings had in the Third Judicial District Court of the Parish of St. Charles, in a certain suit, wherein Ambrose Lanfear was plaintiff, and H. L. Hunley was defendant; and also of the proceedings had in the Supreme Court on the appeal taken by the said Ambrose Lanfear, which appeal is now on the files thereof, under the number 6,045.

In testimony whereof I have hereunto set my hand, and affixed the seal of the said Court, at the City of New Orleans, this eleventh day of May, in the year [SEAL.] of our Lord one thousand eight hundred and sixty, and in the eighty-fourth year of the Independence of the United States of America.

EUGENE LASERE, *Clerk.*

UNITED STATES OF AMERICA.

SUPREME COURT, EASTERN DISTRICT.

State of Louisiana.

I, Edwin T. Merrick, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Eugene Lasere is Clerk of the Supreme Court for the Eastern District; that the signature of Eugene Lasere to the foregoing certificate is in the proper handwriting of him, the said clerk; that the certificate is in due form of law; and that full faith and credit are due to all his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the City of New Orleans, this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty.

E. T. MERRICK. [E. T. M.]

TRANSLATIONS.

DOCUMENT L. H., No. 1. (Page 19.)

No. 74. The children of the late Paul Toups, deceased, by their notice, presented the 31st December, 1806, claim a tract of land of 18 arpents front, by a depth of two and a half leagues, situated at three and a half leagues from the river, at a place called the "Coteau de France," (Ridge of France,) in the Parish of St. Charles, German Coast, on the left bank, going up, at a distance of about eleven leagues from the city, as is explained in the following title:

To his Excellency the Baron de Carondelet, Brigadier of his Majesty's Armies, Governor-General of the Province of Louisiana, &c., &c., &c.: (page 20.)

The humble prayer of Paul Toups, a resident of the German Coast, Parish of St. Charles, respectfully represents to your Excellency, that for the last three consecutive years he has suffered considerable losses by the failure of crops and death of slaves, that by those unforeseen losses he has become largely involved in debt, which he cannot pay, except by the sale of his plantation, which is the only means of subsistence for his family.

Your petitioner therefore appeals to your Excellency's clemency to grant him, with title of property, a tract of land belonging to his Majesty's (may God preserve) domain, which he may improve and establish as a stock farm, "*Vacherie*," which land is situated on the place called "*Les Coteaux de France*, (Ridges of France,) at a distance of about eleven leagues from this Capital, and at about three and a half leagues from the river, on the other bank, reaching to a bayou called "Crocodile," which runs parallel with the river; the said land to be taken from the crossing of said bayou as far as the large swamp in the rear of the "Bayou des Cannes," (Cany Bayou,) which constitutes a strip of land of about sixteen or eighteen arpents in its average width, by a depth of about two and a half leagues, bounded on one side by floating prairies, and on the other by lakes (or lagoons) and marshes.

In the hopes that your Excelleney will grant him his prayer,

Your petitioner will ever pray the Almighty to grant your Excellency many happy days.

At New Orleans, this 21st Nov'ber, 1795.

(Signed) PAUL TOUPS.

New Orleans, 12th March, 1796. (p. 21.)

The Surveyor-General of this Province, or any deputy appointed to that effect, will lay out the portion of land demanded, on a strip

of land of an average width of eighteen arpents, and a depth of two leagues and a half, provided the same be as herein expressed, bounded by floating prairies or lagoons, and provided it causes no prejudice to any one; and, under these circumstances, he will make out a detailed process verbal of his surveys, which he will hand over to me, that it may be used by the parties in interest as a (legal or) title in due form.

(Signed) BARON CARONDELET.

DOCUMENT L. H., No. 2. (Page 23.)

Sale of Land from Toups' Heirs to Mr. A. Daspit St. Amand.

This day, the seventh of November, in the year of our Lord one thousand eight hundred and seven, and the thirty-second year of the American Independence,

Before us, Pierre Bauchet St. Martin, Captain of Militia and Judge of the Parish of St. Charles, County of the German Coast, and in the presence of Messrs. Charles Perret and Charles Aimée D'Arensbourg, undersigned witnesses, personally appeared Messrs. Frederic Toups, George Toups, and Frederic Mathis, all three heirs of the late Paul Toups, residing in this parish and of the age of majority, who by these presents do sell, cede, and transfer unto Mr. Daspit St. Amand, here present and stipulating for himself, his heirs and assigns, a tract of land, free from debts and mortgages, situate in this parish, on the right bank of the river, and containing from sixteen to eighteen arpents in its average width, by a depth of about two and a half leagues, bounded on one side by floating prairies, and on the other by lakes and marshes, the said land being called "*Les Coteaux de France*," (the Ridges of France,) distant about eleven leagues from the capital, and has been conceded to them by the Baron de Carondelet, Governor of this Province, in the year 1795, the same which said Paul Toups has established in a stock farm, (*vacherie*,) and of which the purchaser declared to us he had a full and perfect knowledge. The said sale is made for and in consideration of the sum of six hundred dollars, three hundred dollars whereof was paid cash in our presence, in sound and current coin, the receipt whereof is hereby acknowledged by the vendors, and the other three hundred dollars payable at the sale of the sugar of next year's crop, eighteen hundred and eight. The said vendors hereby putting the said Antoine Daspit St. Amand in the peaceable enjoyment and possession of the said property, as of a thing belonging to him, and renouncing in his favor all their rights, titles, and actions in and to the said land, as it now stands, and binding themselves to warrant the said purchaser in the peaceable enjoyment thereof, renouncing all exceptions and reserves whatsoever.

Thus done and passed in the office of our jurisdiction, the day, month, and year above written. The vendors (with the exception of Mr. Frederic Mathis, who declared that he did not know how to write, and to which fact we, Judge, certify) have signed with us.

(Signed) CHARLES AIMÉ D'ARENSBOURG,
" FREDERIC TOUPS & GEORGE TOUPS,
" ANTOINE DASPIT ST. AMAND,
" P'RE B'CHET ST. MARTIN.

A true copy. Parish of St. Charles, 27th June, 1855.

(Signed) EMILE TASTET,
Recorder.

DOCUMENT L. H., No. 3. (Page 25.)

Sale of Land from Onesiphore St. Amand, in his capacity, to T. M. Ward.

STATE OF LOUISIANA,

Parish of St. Charles.

This day, the 27th December, of the year eighteen hundred and forty-five, and the seventieth of the Independence of the United States of America,

Before me, François Chaix, Judge in and for the Parish of St. Charles, therein residing and exercising the duties of Notary Public, and in presence of the witnesses hereinafter named and undersigned,

Personally appeared Mr. Onesiphore St. Amand, residing in this parish, herein acting in his capacity of testamentary executor of Antoine Daspit St. Amand, deceased;

Which appearer, in his said capacity, did declare and say that, by virtue of and in conformity with an order or decree of the Honorable Court of Probates for the Parish of St. Charles, bearing date the 20th of September last past, (1845,) and after the delays, advertisements, and publications required by law, the Judge, ex-officio public auctioneer for this parish, did proceed, on Monday, the 27th October last, (1845,) to sell at auction the immovable property belonging to the succession of the said Antoine Daspit St. Amand, deceased, situated in this parish, and that at the said sale, Mr. Françis Marion Ward, through his agent, Mr. Edward Forstall, being the highest and last bidder, became the adjudicatee of the following described property, to wit:

1st. A tract of land or plantation hereafter more fully described, for the price and sum of thirty thousand dollars.

2d. Another tract of land, called "*Vacherie*," (cattle range), also hereafter more fully described, for the price and sum of four thousand dollars, these two sums, making the aggregate sum of

thirty-four thousand dollars, ($34,000,) payable agreeably to the terms and conditions announced on the day of the said auction sale, to wit: in three equal instalments, at one, two, and three years credit from the day of sale, in notes endorsed to the satisfaction of the testamentary executor, divided by series, secured by special mortgage until final payment, and in case of non-payment as they fall due, the said notes to bear eight per cent. per annum interest from maturity until final payment, as will more fully appear from the process verbal of said auction sale, deposited for reference in the clerk's office of this parish.

The said Mr. Onesiphore St. Amand, in his said capacity, wishing to give the said F. M. Ward a title as complete as possible to the lands to him adjudicated at the afore-recited sale, does, by these presents, sell, convey, transfer, deliver and set over, from this moment and forever, under all warranties of law, and with substitution and subrogation to all rights and titles to property, recourses, and actions in warranty, which the succession of the late Antoine Daspit St. Amand now has or may hereafter have against all preceding vendors and owners,

Unto the said Francis Marion Ward, domiciled in the City of New Orleans, here present, and accepting and purchasing for himself, his heirs, and assigns.

1st. A tract of land or plantation, situated in this Parish of St. Charles, on the right bank of the Mississippi river, about twenty-six miles from New Orleans, bounded on the upper side by land belonging to Mr. Honoré Doussan, and on the lower side by land belonging to Mr. Pierre Kinler, the said plantation measuring twelve arpents and twenty toises front on the river, more or less, by eighty arpents in depth, together with the triple concession resulting from the public sale made at the City of New Orleans of the lands belonging to the government, the whole agreeably to the titles.

Also, together with all the buildings, fences, improvements, &c., existing on or belonging to said plantation, with the exception of those reserved on the day of the sale at auction.

2d. A tract of land called "*Vacherie*," (stock farm,) situated in the rear of the plantation hereabove described, at about nine miles from the river, and measuring about twenty-eight arpents front on the Bayou Crocodile, by a depth extending between lines nearly parallel to the "*Saut D'Ours*," (Bears Leap,) the whole agreeably to the titles and plans of the said land.

The present sale is made and accepted for and in consideration of the sum of thirty-four thousand dollars, price of adjudication of the aforesaid property, payable agreeably to the terms, clauses, and conditions here above mentioned.

Therefore, the said Francis Marion Ward has presently furnished sixty-seven notes, dated the 27th October, 1845, by him subscribed

to the order of and endorsed by Mr. Ambrose Lanfear, for the amounts following, to wit: Eighteen notes for $1,259 $\frac{25}{100}$ each, six of which are payable at one year, six at two years, and six at three years from date; nine notes for the sum of $419 $\frac{20}{100}$ each, three of which are made payable at one year, three at two years, and three at three years after date; eighteen notes for the sum of $209 $\frac{57}{100}$ each, six of which are payable at one year, six at two years, and six at three years from date; twenty-one notes for $179 $\frac{89}{100}$ each, seven of which are payable at one year, seven at two years, and seven at three years from date; the said notes to be deposited in the commercial house of Ambrose Lanfear, in New Orleans, after having been signed and paraphed ne varietur by me Judge and Notary undersigned, of this date, to identify them with this act, were delivered to the said Onesiphore St. Amand, in his said capacity, who acknowledges the receipt thereof.

To secure the punctual payment of these notes at their maturity, the property hereby sold remains specially mortgaged and hypothecated in favor of the said Onesiphore St. Amand, in his said capacity, or any holder of said notes.

From the certificate which I do hereby give in my capacity of Judge, "ex-officio" Recorder of Mortgages in and for this Parish of St. Charles, there do not exist to this date, on my records, any mortgage inscribed against the succession of the late Antoine Daspit St. Amand, on the property herein sold.

Thus done and passed at my office, in the Parish of St. Charles, the day, month, and year aforesaid, in presence of Messrs. Seraphin Brou and Lartigue Mongrué, competent witnesses, who, together with the appearers and me, the said Judge and Notary, have hereunto signed, after reading the whole.

(Signed,) ORE. ST. AMAND,
F. MARION WARD,
SERAPHIN BROU,
JN. BTE. LARTIGUE MONGRUÉ,
F. CHAIX,
Judge and Notary Public.

A true copy from the original, deposited in my office for reference. Parish of St. Charles, this 7th October, 1857.

(Signed) EMILE TASTET,
Recorder.

DOCUMENT L. H., No. 9. (P. 65.)

Sale of land from Frederick Toups to Antoine St. Amand.

STATE OF LOUISIANA—PARISH ST. CHARLES,
German Coast.

Extract from the records in the office of the Court of the Parish of St. Charles.

Before me, Achille Trouard, Judge of the Court and Civil Commandant in and for the German County, therein residing, personally appeared Mr. Frederic Toups, who, in presence of Mr. Louis Maillard and Gaspard Emilien, witnesses here present and undersigned, declared unto me, that he did sell, convey, transfer, and set over from this moment and forever, free from all debts, alienations, mortgages, and incumbrances whatsoever, a tract of land and plantation of two arpents front by the ordinary depth, situated in this said county, on the right bank of the river, distant about eight leagues from the capital, bounded above by the plantation of Henry Jean, and below by that of Mr. St. Amand, said tract of land and plantation as it now stands, together with all the buildings, fences, and all the improvements thereon, without any exception or reserve, unto Mr. Antoine Daspit St. Amand, here present and accepting purchaser for himself, his heirs, and assigns, the said land and plantation, the situation and contents whereof he here declares to have a perfect knowledge for having examined and visited the same, and having been in possession of the same for the last two months.

For the price and sum of twelve hundred dollars in specie, three hundred and twenty dollars whereof have been paid cash to the vendor, and for which he here gives his receipt in due form, and the balance of the price, to wit: eight hundred and seventy-five dollars, payable in all the month of February, of the year eighteen hundred and six.

Wherefore the said vendor does hereby renounce in favor of the said purchaser all the rights, title, claims, and interest of any nature whatsoever, which he had or may have in and to the said land and plantation, to the end that he, the said purchaser, here present and accepting, shall enjoy and dispose of the same as he may think fit, as of a thing lawfully belonging to him.

Thus done and passed this 13th July, A. D. 1805, and the 29th of the American Republic, in the presence of the contracting parties, and the witnesses with me, Commandant aforesaid, who certify to these facts.

Frederic Toups, Antoine Daspit St. Amand, Roubien, Louis Maillard, and Achille Trouard.

I, Marie Louis Florent Basile, Judge of the Parish of St. Charles, certify the foregoing to be a true copy of the original act, deposited in the archives of this office.

In testimony whereof, I have delivered the present certificate, and have affixed thereto the seal of this parish. Parish of St. Charles, this 5th January, 1814.

(Signed) F^ENT BASILE, *Judge*.

DOCUMENT L. H. No. 10. (page 67.)

Sale of lands by the succession of Jacques Rixner to Paul Toups. (p. 68.)

20th November, 1789.

This day, the twentieth of November of the year seventeen hundred and eighty-nine, at nine o'clock A. M., personally appeared before me, Jacques Masicot, Captain of Militia, Judge and Commandant of the Parish of St. Charles, German Coast, therein residing, Mr. Jean Louis Rixner, Testamentary Executor of the succession of the late Jacques Rixner, his brother, deceased, in said parish, who declared unto us, in the presence of Messrs. André Wackering, Louis Bouteillie, Eugene Fortier, witnesses undersigned, having sold, conveyed, transferred, and assigned, now and forever, in full ownership and enjoyment, and free from all debts, mortgages, alienations, and substitutions whatsoever, a land and plantation belonging to the succession of the late Jacques Rixner, containing nine arpents front by eighty in depth, agreeably to the title, situated at about seven leagues from the city, bounded above by land belonging to us, Commandant, undersigned, and below by that of the said succession, on the left bank of the river, ascending, together with all the buildings, fences, and improvements thereon, as well as four pairs of cisterns and their machinery, (*quatre pere de cuve and leur mouvement,*) such as they now stand, and agreeably to the details in the inventory, the said vendor reserving from this sale one hundred cypress trees, to be taken for the swamp, for the use and keeping in repairs of the land reserved for the daughter of the deceased; the said sale thus made, for the price and sum of five thousand dollars in current money,

Unto Mr. Paul Toups, here present and accepting purchaser for himself, his heirs, and assigns, payable as follows, to wit: one thousand dollars in the month of December, seventeen hundred and ninety; two thousand dollars in the month of December, seventeen hundred and ninety-one; and the other two thousand dollars, in all the month of December, of the year seventeen hundred and ninety-two. The said purchaser being satisfied with the description of the property, he having seen and examined the same, and taking possession from the signing of this act.

The said land and plantation to remain mortgaged, and not to be sold by the said purchaser until final payment. Thus agreed upon between the contracting parties, promising, &c.; binding, &c.; renouncing, &c.

Done and passed in the office of the undersigned Commandant, the day, month, and year aforesaid. The contracting parties and

the witnesses have signed these presents with me, the undersigned, after reading of the whole.

(Signed) Jn. Louis Rixner, Paul Toups, Em. Fortier, André Wackernie, Louis Bouteiller, Jacques Masicot.

A true copy, from the original, deposited in my office for reference.

Parish of St. Charles, this 7th October, 1857.

(Signed) EMILE TASTET,
Recorder.

DOCUMENT L. H. No. 1. (Page 78.)

I, the undersigned, at the request of Mr. Antoine Daspit St. Amand, certify that I have been requested to draft for him a plat of a certain tract of land, which he owns in the rear of his land, situated at the place called "*Coteau de France*," (Ridge of France,) at about three leagues from the river Mississippi in the depth, and about eleven leagues from New Orleans, which land he me, he has obtained from Mr. Paul Toups, and that it contained a depth of two leagues and a half by about 18 to 27 arpents at divers places, and that he would exhibit the titles to whomsoever it may concern.

I, therefore, went in company of the said applicant, to explore the "Bayou Crocodile," from which the front takes its start, and having examined the locality, I found that the land, in its average width, might have 18 arpents front on the bayou, and that at its depth, above the "Bayou *Trois Fourches*," (Three Forks Bayou,) it might have 27 arpents.

Then, from point A, I started the border line running south 29 degrees west for the depth, 207 arpents, to the point C, whence, opening the front for the rectangle, I measured 28 arpents, where I stuck the post B; thence opening the parallel, I ran said parallel as far as the Bayou des Cannes, at point D, a length of 209 arpents—the said lines to be the boundaries of the said applicant—so that he finds himself bounded by marshes and floating prairies, the "Bayou *des Cannes*" (Cany Bayou) and Crocodile Bayou, and has an area of 3,824 arpents, and about 2,744 arpents of "*terre ferme*," high land, as it is demonstrated in the plan.

Done 21, closed 9th October, 1807.

A true copy from the original—Potier.

(Signed) T. V. POTHIER,
Sworn Surveyor.

To "*Monsieur*," Mr., the Baron of Carondelet, Brigadier of the Armies of His Majesty Governor-General of the Province of Louisiana, &c., &c., &c. (P. 79.)

The humble supplication of Paul Toups, a resident of the German Coast, Parish of St. Charles, respectfully represents to your Excellency, that for the last three consecutive years he has suf-

fered considerable losses by the failure of crops and death of slaves; that by those unforeseen losses he has become largely involved in debt, which he cannot pay except by the sale of his plantation, which constitutes his sole means of support for his family.

Your petitioner, therefore, appeals to your Excellency's clemency to concede to him, with title of property, a tract of land belonging to his Majesty's (may God preserve) domain, which he may improve and establish as a "vacherie," (stock farm,) which land is situate on the place called "*Les Coteaux de France*," (the ridges of France,) at a distance of about eleven leagues from this capital, and at about three and a half leagues from the river, on the other bank, reaching to a bayou called "Crocodile," which runs parallel with the river; the said land to be taken from the crossing of said bayou, as far as the large swamp in the rear of the "Bayou *des Cannes*" (Cany Bayou,) which constitutes a strip of land of about sixteen or eighteen arpents in its average width, by a depth of about two and a half leagues, bounded on one side by floating prairies, and on the other by lakes (or lagoons) and marshes.

In the hopes that your Excellency will grant him this, his prayer,

Your petitioner will ever pray the Almighty to grant your Excellency many a happy days.

At New Orleans, this 21st Nov'er, 1795.

(Signed) PAUL TOUPS.

(P. 81.)

NEW ORLEANS, 12th March, 1796.

The Surveyor-General of this Province, or any deputy appointed to that effect, will lay out the portion of land demanded, on a strip of land of an average width of eighteen arpents, and a depth of two leagues and a half; provided the same be, as herein expressed, bounded by floating prairies or lagoons, and provided it causes no prejudice to any one; and, under these conditions, he will make out a proces verbal of his survey which he will hand over to me, to be used by the parties interested as a legal title.

(Signed) BARON DE CARONDELET.

(P. 82.)

This day, the seventh of November, in the year of our Lord one thousand eight hundred and seven, and the thirty-second year of the American Independence.

Before me, Pierre Bouchet St. Martin, Captain of Militia and Judge of the Parish of St. Charles, County of the German Coast, and in presence of Messrs. Charles Perrot and Charles Aimée D'Arensbourg, undersigned witnesses, personally appeared Messrs. Frederick Toups, George Toups, and Frederic Mathis, all three heirs of the late Paul Toups, residing in this parish, and of the age of majority, who by these presents do sell, cede, and

transfer unto Mr. Ant'e Daspit St. Amand, here present, and stipulating for himself, his heirs and assigns, a tract of land, free from debts and mortgages, situate in this parish, on the right bank of the river, and containing from sixteen to eighteen arpents in its average width, by a depth of about two and a half leagues, bounded on one side by floating prairies, and on the other by lakes and marshes, the said land being called "*Les Coteaux de France*," (the ridges of France,) distant about eleven leagues from the capital, and has been conceded to them by the Baron de Carondelet, Governor of this Province, in the year one thousand seven hundred and ninety-five, the same which said Paul Toups has established in a stock farm, (vacherie,) and of which the purchaser declared to us he had a full and perfect knowledge. The said sale is made for and in consideration of the sum of six hundred dollars, three hundred dollars whereof was paid cash, in our presence, in sound and current coin, the receipt whereof is hereby acknowledged by the vendors, and the other three hundred dollars payable at the sale of the sugar of next year's crop, eighteen hundred and eight.

The said vendors hereby putting the said Antoine Daspit St. Amand in the peaceable enjoyment and possession of the said property, as of a thing belonging to him, and renouncing in his favor all their rights, titles, and actions in and to the said land as it now stands, and binding themselves to warrant the said purchaser in the peaceable enjoyment of the same, renouncing all exceptions and reserves whatsoever, the month, day and year above written; and the vendors have hereunto signed with me, with the exception of Mr. Frederic, who declared that he did not know how to write, and to which fact I, Judge, certify.

Frederic Toups, George Toups, Ch's Perret, Chs Aimé D'Arensbourg, Antoine Daspit St. Amand, P're B'chet St. Martin.

A true copy, from the original deposited in the archives of this jurisdiction, this 21st November, eighteen hundred and seven.

[SEAL.] (Signed) P'RE B'CHET ST. MARTIN.

DOCUMENT L. H., NO. 2.—(CONTINUATION.) (P. 88.)

At New Orleans, this 17th August, of the year 1809, and of the Independence of the United States the 34th,

I, the undersigned, Alexander Trouard, commissioned by Barthelemy Lafon, sworn Surveyor for the Territory of Orleans, Surveyor of the Parish of St. Louis, and specially deputized for the County of Orleans by Mr. Seth Pease, Surveyor-General of the Southern Territory of Tennessee, certify, that at the request of Mr. Pierre Domé I repaired, on the 9th July, 1809, to a certain tract of land on which he now resides, and situated in the said ("*quartier*") neighborhood, to measure its extent, fix the boundaries, and renew them, if necessary, establish the lines between the adjoining neigh-

bors. Whereupon, being on the premises, I requested the production of the documents which entitled him to cause the execution of said proceedings, and he exhibited to me the following, viz: certificates signed by several planters, from which it appears that this land has been settled upon since about forty years by Mr. Charles Domé, father of the said Pierre Domé, and that he abandoned it solely on account of the crevasses at the Bonnet Carré. The said certificates are signed by Messrs. Henrian Enoul Dugué, Joseph Wiltz, Baptiste Rousselle, Baptiste Rolland, Joseph Dauphin, Adam Vicner, Balthazar Vicner, Henry Metzinger, George Weber, Jos. Berthelos, Jean Webre.

I, thereupon, in presence of the proprietor, Mr. Pierre Domé, and Mr. Ranito, witness required to assist, (there being no neighbors,) proceeded to the admeasurement of the said land, and having reached the point A, I started, directing my course north 81° 30″ east of my compass, variation N. 8° 30″ east, and opened a line following the border line of the United States lands for 15 toises from the said point A, where I struck post (13) B; thence measuring 30 toises on a timbered swamp, I stuck another post C; thence I measured 1,315 toises to the point E, where I stopped. All this line from A to E having a depth of forty arpents and ten toises. Going back to the point A, I measured a line running N. 150 to 1–160–300′. N. 25 E. 150′, and I measured on the line ("*pontuée*") marked B. H. I. N. 20 arpents or 600 toises, forming the front of the said plantation; arrived at point M, I directed my graphometer towards north 81° 30″ east of my compass, and measuring 30 toises I stuck another post, O; and measuring again 1,320 toises, I closed my admeasurement, the line having a length of forty-five arpents and ten toises.

It results, therefore, in favor of Mr. Pierre Domé, a tract of land bounded south and north by lands belonging to the United States, east by Lake Malin and west by Bayou des Allemands, containing eight hundred and sixty-eight superficial arpents, forty of which are fit for culture, no cypress land, (ciprière,) ten of elevated prairie, and the balance of low prairies and lagoons. In faith whereof, I have delivered the present plan and proces-verbal.

I, the undersigned, testamentary executor of the late Bmé Lafon, do certify that the original of this plan and proces-verbal is recorded in the Book of Surveys C, No. 159, folo. 283, of the said Bmé. Lafon. In faith whereof, I have delivered the present, for the use and benefit of whomsoever it may concern.

New Orleans, 29th May, 1821.

(Signed) BONMAIRALT.

(P. 91.)

On this, the twenty-second day of the month of March, of the year eighteen hundred and twenty-seven, the fifty-first of the Indedependence of the United States of America,

Before me, Jean M. M. Guiramand, Judge of the Parish of St. Charles, in the County of the Germans, ("Comté des Allemands,") State of Louisiana, and therein acting as Notary,

Came and appeared Mistress Marie Duvieux, widow of the late Pierre Domé, herein acting in her own personal name on account of the community which existed between her and the late Domé, her husband, and as curatrix *ad bona* of Louis Domé, a minor, issue of her marriage with Pierre Domé, deceased; Louis Adam, in the name of and as representing Geneviève Domé, his wife; and Louis Maitre Jean, in the name of and as representing Louise Domé, his wife; the two former residents of this parish, and the latter domiciliated in the Parish of Orleans,

Who, in presence of Messrs. Michel Mestayer and B. A. Riebelt, competent and required witnesses, said and declared, having sold, ceded, conveyed, and transferred by these presents, free from all donations, debts, mortgages, alienations, evictions, and from all other incumbrances whatsoever,

Unto Mr. Antoine Diez, a resident of this parish, here present and accepting purchaser, for himself, his heirs, and assigns,

A plantation, (*vacherie*,) stock-farm, situated in this parish, at about five leagues from the river, fronting on Bayou des Allemands, and bounded on the three other sides by a bayou called (Le Saut D'Ours) the Bear's Leap, by the Lake Malin, and the Bay Domé, the same property which has been adjudicated this day to said Antoine Diez, at the public sale which has been made of the said plantation in the Office of the Parish Judge, together with the buildings thereon, with the exception of that which belongs to Mr. Louis Adam and Michael Belsom, and of a certain quantity of pickets belonging to said Louis Adam, which are not included.

The present sale is made for and in consideration of the sum of five hundred and fifteen dollars, payable as follows, to wit: two hundred and fifty-seven dollars and fifty cents in all the month of March, eighteen hundred and twenty-eight; and two hundred and fifty-seven dollars and fifty cents in all the month of March, eighteen hundred and twenty-nine; for which said sums he has furnished his notes, maturing at said time, which, after having been paraphed *ne varietur* by me, have been handed over to the vendors; and to secure the payment of said notes, said purchaser has consented that the land herein purchased do remain, specially and by privilege and preference, mortgaged until final payment.

And, by reason of what precedes, the vendors hereby abandon, fully and entirely, all their rights and title of property in and to the said land, in order to transfer the same to said purchaser, who acknowledges possession thereof and is satisfied of the same, for the latter to enjoy aad dispose of the same from this day and forever, as of a property belonging to him by virtue of the present act, thus promising, binding, and renouncing, &c., &c.

Done and passed in my office the day, month, and year aforesaid. And the said have signed these presents with me and the afore-named witnesses, with the exception of Mrs. Widow Domé and of Mr. Louis Maitre Jean, who, being requested to sign, declared not to know how.

The original is signed, LOUIS ADAM,
Ordinary mark ✕ of MRS. WIDOW DOMÉ,
Ordinary mark ✕ of LOUIS MAITRE JEAN,
M'DE METAYER,
P. A. RIEBELT,
J. M. M. GUIRAMAND,
Notary Public and Judge.

A true copy of the original.
Parish of St. Charles, 14th March, 1828.
(Signed) J. M. M. GUIRAMAND,
Judge, Not. Pub.

(P. 94.)

I, J'n Adam Vickner, certify to have seen the late Mr. Domé residing on the Bayou des Allemands, established thereon since forty and some odd years. This 6th September, 1809.
(Signed) JEAN ADAM VICKNER.

(P. 94.)

I, Balthazar Vickner, do certify that I have seen the late Mr. Domé established on the Bayou des Allemands since forty and odd years. This 6th September, 1809.

I, the undersigned, certify, to whomsoever it may concern, that I have a perfect knowledge of Domé having resided, since over forty years, on the Bayou des Allemands; neighbor of his; of my (*vacherie*) stock-farm, which was then Mr. Joseph Villars, my father-in-law.
This eighth September, 1809, at my plantation.
(Signed) FLEURIAN.

(P. 95.)

I certify that the land of the Bayou des Allemands belongs to Mr Charles Domé, since forty and some odd years; and that he has left it solely on account of the crevasses of the Bonnet Carré.
This 6th September, 1809.
(Signed) JEAN WEBRE.

(P. 95.)

I certify that the land of the Bayou des Allemands belongs to Mr. Charles Domé, since forty and some odd years, and that he has left it solely on account of the Bonnet Carré crevasses.
New Orleans, this 1st September, 1809.
(Signed) HENRY MONTZINGER.

(P. 95.)

I certify that the land of the Bayou des Allemands, belonged to Mr. Charles Domé, since forty and some odd years, and that he left solely on account of the Bonnet Carré crevasses.

This 7th September, 1809.

(Signed) PIERRE BOSSIER.

(P. 95.)

Mr. Pierre Bordron, residing in Louisiana, on the plantation belonging to Mr. Antoine Diez, and known under the name of (*Vacherie*) stock farm, in the Parish of St. Charles, declare under oath, that it is to his knowledge that this plantation was established as a (vacherie) stock farm for more than forty years.

(Signed) PETER BORDRON.

Sworn to and subscribed before me, May 21st, 1833.

(Signed) GIEN. PREVAL.

(P. 97.)

(At foot of page 97,) Doc. L. H. No. 3.

Mr. Robin, commandant at the German Coast, will establish the petition, by giving him the 12 arpents of land he asks on the Bayou des Allemands, provided it causes no prejudice to the surrounding neighbors, and that the same be vacant. To which land he will fix the lines and boundaries in presence of the said neighbors, and no opposition being made thereto, and he will mention at the foot of this decree, the proceedings of admeasurement by him executed, which he will sign as all the assistants.

Of this title in form, instructing the petitioner Pierre Rayet to make the roads, levees, fences, and clear all the front of said 12 arpents by a depth of two arpents, within the three first years, and also to make the ditches necessary for the drainage of the rain waters, the whole in conformity with the regulations of the 18th February, 1771.

SUPREME COURT, EASTERN DISTRICT.
State of Louisiana.

I, Eugene Lasére, clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing twenty-six pages, numbered from 306 to 331, both inclusive, do contain true and correct translations of the documents in the French and Spanish languages, contained in the record, the paging whereof is referred to at the head of each translation.

In testimony whereof I have hereunto set my hand and affix the seal of the said Court at the City of New Or-
[SEAL.] leans, on this eleventh day of May, in the year of our Lord one thousand eight hundred and sixty.

EUGENE LASERE,
Clerk.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 25.

AMBROSE LANFEAR, PLAINTIFF IN ERROR,

vs.

H. L. HUNLEY,

ARGUMENT FOR THE DEFENDANT.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 25.

AMBROSE LANFEAR, PLAINTIFF IN ERROR,

vs.

H. L. HUNLEY,

ARGUMENT FOR THE DEFENDENT.

STATEMENT OF THE CASE.

This case comes from the Supreme Court of the State of Louisiana, and its decision by this Court not only disposes of the land claimed by the defendant, but settles the title to other parcels of valuable lands, as appears by the record, p. 65

The plaintiff claims under the grant to Paul Toups, and an order to survey, made by the Spanish Governor of New Orleans in March, 1796. The claim made in the petition under St. Amand, as will appear is but another mode of asserting the Toups' claim.

To maintain the plaintiffs case it will be found necessary it is submitted, to show that the above grant actually covers the land occupied and elaimed by the defendant.

The defendant claims the land as a setter under the United States laws of pre-emtion, and it is fully conceded in the record that he had the qualifications, and had complied with all the requisitions of the laws in that behalf, so that if it should be determined that the land located by him was publie, he will prevail in the case. And such it is submitted must be the rule of this court. If the

plaintiff fails to show that the land is covered by his title judgement must go against him.

ARGUMENT FOR THE PLAINTIFF.

It is contended for the plaintiff that the acts of Congress, and of the commissioners under them, with the survey of Hawke in 1854, approved by the Surveyor General of Louisiana, perfected the title of the plaintiff to the land in controversy.

It may be that the plaintiff has a kind of a title under the Toups grant, to some land; although not wholly through the means refered to; and it will be shown that the land of the defendant is not covered by that title. The title as set up for him can barely be said to have been perfected, for he never received a patent.

The act of March 3, 1807, 2d States, 440, authorized the appointment of commissioners to pass upon claims to lands granted prior to 1803, in the Territory of Orleans. The 2d section limits the extent of such grant to 2000 acres, and declares that no grant shall be confirmed, so as to extend the grant. It simply authorized a confirmation of the grant, the location and limits, to be otherwise determined. Under this law the children of Toups made their claim in language more vague then the grant fixing, no limit, starting point, or terminus. And this claim as expressed was confirmed in 1812. 2d State Papers, 384, No. 74.

In 1807 St. Amand purchased of the children of Paul Toups, the whole tract covered by the grant to their father. See Record, pp. 11 and 147. The description in the conveyance is general, but Paul Toups had already located the boundary Bayou Crocodile, now disputed by the plaintiff.

St. Amand immediately caused a survey of the tract to be made, at which he was present, and the boundaries were found to be Bayou Crocodile, from which the land extend-

ed southerly to Bayou Saut d'Our, and on the sides were floating prairies and marches. See Transcrip from the Louisiana Land Office. Record pp. 34 and 153.

It would seem that St. Amand, and those claiming under him ought to be concluded by this survey.

St. Amand made his claim under the law of Congress for this land, describing it as a tract fronting on "Bayou Crocodile," with the other boundaries as above. 3d State Papers, p. 257, No. 529. This was confirmed also, and as hereafter shown with this boundary excluding the land of defendant, the above tract came to the hands of the plaintiff.

In 1853 the plaintiff and Polk, his co-owner of the tract, had the lands lying northerly or easterly of Bayou Crocodile, and between the above tract and the Mississippi River, surveyd, as public lands; and placed squatters on them. See Record, pp. 58 and 59.

In 1854, the defendant located on the quarter section in dispute parcel of this same land, p. 51.

In 1854 and 1855, Hawke made a survey of the land granted to Paul Toups, as confirmed to his children, and so located it as to over run Bayou Crocodile, and cover the lands of the defendant, as well as of the squatters of the plaintiff. Report of Benjamin, Record, p. 73, &c., This was approved by McCulloch, Surveyor General of Louisiana, May 5, 1855. Record, p. 74. For which he gives his reasons at length. In January 1856, the Commissioner of the General Land Office, reversed the action of the Surveyor General, and ordered him to survey the Paul Toups claim, in effect as it was surveyed by St. Amand in 1807. Record, p. 45. I ask the attention of the court to the views of the Commissioner. Here so far as the General Land Office is concerned, the matter rests.

Under the rule in West and Cochran, 17 Howard, p. 403, quoted by the plaintiff, the plaintiffs title to any land is incipient, and cannot be recognized by this court, unless he falls back on the survey of 1807.

The plaintiff applied to Congress for relief, and Mr. Benjamin in the Senate reported in his favor. Record, p. 73, and Congress passed the act of August 8, 1856, for his relief, 11 Stat. 473, Record, p. 135. This expressly provides, that the setlers on the lands claimed under the Paul Toups grant, shall have their rights "determined judicially in the same manner as though the land on which they are settled had been surveyed as public land," &c,. and they "shall not be deprived of the same, unless it is judicially decided that the said surveyes, (the Hawke survey &c.,) were made in conformity with the legal right of the said Ambrose Lantear, under the said confirmation." (The confirmation of Paul Toups children, 74, and of St. Amand, No. 529.)

This explicit declaration of positive law, remits the parties to the judicial courts to ascertain the location and limits of the Paul Toups grant, unembarrassed by any action of any other department of the Government or any ruling of any court.

It is a case made and referred to this court, by act of Congress.

THE CASE ON ITS MERITS.

This has been incidentally disposed of in the examination of the legal propositions of the plaintiff, but will now receive a fuller consideration.

The only question presented is the location of the eastern or northern boundary of the land granted to Paul Toups. The plaintiff claiming that it is a line eighty arpents from the west bank of the Mississippi River, thus including the land of the defendant.

The defendant, that it is the Bayou Crocodile, which excludes his land.

In 1795, Paul Toups, then the owner of a plantation on the right bank of the Mississippi river, in the Parish of St. Charles, petitioned the then Governor of Louisiana, Baron Carondelet, for a grant of land, to be used as a cattle range, stock farm, "*vacherie*," which land is situate on a place called the Ridges of France (*des cotux de France*,) about eleven leagues from New Orleans, and three-and-a-half from the river, on the other bank reaching to a Bayou called Crocodile, which runs parallel with the river, "the said land to be taken from the crossing of said Bayou, as far as the large swamps in the rear of the Bayou des Cannes (Cany Bayou,) which constitutes a strip of land of about sixteen or eighteen arpents wide, and about two-and-a-half leagues in depth; bounded on one side by floating prairies and on the other by by lakes and marshes."

This was granted as prayed for.

It is said that as Toups then owned a plantation on the river, nine arpents wide, and eighty deep, he undoubtedly intended to have his new grant commence on the rear line of his plantation, and not leave a large space between his plantation and stock farm.

If this was the intention of Toups, why did he not say so? Why not say to commence at the rear line of his plantation, instead of Bayou Crocodile? He does not refer to his plantation at all in connection with the proposed grant. He certainly knew that it did not extend to Bayou Crocodile.

The purpose for which Toups wanted the land controlled its location and limits, without any reference to his plantation. It was for a stock farm; and Bayou Crocodile and the large swamp, the floating prairies and lakes

furnished its natural limits and enclosure, and as if there could be any doubt of this the plaintiff, has himself proved by Baudoin, St. Martin, and others, that it was necessary to have a place with natural enclosures for a vacherie, and that these were found between Bayou Crocodile, the swamps, lakes &c., and that cattle could not be kept between the rear of Toups plantation and Bayou Crocodile, without artificial fences, see p. 6 & 7 &c.

Toups was embarrassed, had been unfortunate, and was in debt, which were the reasons for asking for the grant. He ranged about that wild region of swamp lagoon and Bayou until he found dry land enough for a stock farm, surrounded with natural enclosures which he was too poor to construct, and procured a grant of it.

The claim of the plaintiff would have given Toups nearly the whole of the "Rridges of France," as shown on the map. But he did not ask for the Ridges of France, but for "land situated on the Ridges of France."

As tending to render uncertain the otherwise explicit language of Toups, it has been urged that there were numerous Bayous Crocodile, and at least three, to either which the terms of this petition of Toups may be referred. It is said that at the time of this grant Petit Bayou was called Crocodile, of this there is not a partical of proof. This could not have been the one intended, for that was "parallel with the river," and as can be seen on the map, Petit Bayou runs at right angles with it.

Crocodile was to be a boundary, while as you see Petit runs through the middle of the tract its too banks forming the "Ridges of France" mentioned. Had there been two or more Bayous Crocodile, Toups would have known it, and would have indicated which he intended. There is no proof that there was but one, and that must neces-

sarily be the one contended for by us. The proposed depth of Toups stock farm, cannot control a known natural boundary, nor is it of any value in ascertaining where that might be. It was at best a random guess at the distance of one object from another, in a wilderness of swamps, at a time when a league or two of marsh and alligators, were of no account. Of all things that men judge of distance is the most uncertain, as this very record shows.

From the language of the request of Toups, construed with reference to his purpose and surroundings, it seems conclusive that he referred to the known Bayou Crocodile, as the beginning and eastern boundary of his grant. It alone fills the desired conditions. It is parallel with the river, and furnished a natural enclosure.

Paul Toups, himself knew what Bayou he meant in his petition, and the actual location of his *vacherie* by himself, must conclude all argument on that point. St. Amand acquired this property of the children of Paul Toups, in 1807, (see rec. 155.) In the conveyance it is mentioned as the land granted by Carondelet, "the same which Paul Toups has established in a stock farm, and of which the purchaser, St. Amand, declared to us (the witnesses, &c.,) he had a full and perfect knowledge." This language is peculiar, and means that the whole of that grant was put into the *vacherie*. The witnesses in the case speak of it as "the Vacherie St. Amand," and locate it as follows:

Baudion, for the plaintiff, says it "was between Bayou Crocodile and Bayou Saut d'Ours." P. 7.

St. Martin, a nephew of St. A., "the Vacherie St. Amand was between Bayou Crocodile and Bayon Saut d'Ours." P. 7

Mongrue, for plaintiff, locates the Vacherie the same,

and says that St. A. frequently told him that the land lying between the rear of his plantation (on the river) and Bayou Crocodile, was Government land; "that it belonged to the United States." P. 7.

Maillard, for defendant, p. 8.

"The Vacherie commenced at Bayou Crocodile and extended to Bayou Saut d'Ours." He also describes the Bayou.

Wm. Polk, for defendant, a former partner of plaintiff and an intermediate owner of the land through and under whom the plaintiff claims, says "the Vacherie always was represented, and lays west of Bayou Crocodile." P. 59.

Barnard, sr., for defendant, says: "I was often on the Vacherie of Paul Toups in his life time. It was beyond Bayou Crocodile. It did not cover lands between Bayou Crocodile and the river. I have heard him say his Vacherie commenced on Bayou Crocodile. St. Amand never claimed the land between the Bayou Crocodile and the river." P. 63.

Barnard, jr., swears the same. P. 64.

Paul Maillard, (p. 96,) has known the Vacherie St. A. 48 years; it terminates on Bayou Crocodile.

Louis Friloux, p 102. The Vacherie is on the other side of Bayou Crocodile towards Bayou des Allemands, west.

J. Kinler, p 102, says the same.

A. Paysegur, p. 102, swears the same.

Wm. Fisher, p. 104, same.

See also the evidence of Gillespie, Sur. Gen. p. 54.

The only contrary proof, if proof it is, resides in four or five affidavits. See Rec. p. 103, &c., by which it appears that the affiants believe that the Vacherie commenced at the rear line of the plantation, though some of them say

the actual location was on Bayou Crocodile. Whatever may be the importance of these, the evidence is conclusive, that the Vacherie was located by Paul Toups on the westerly or southerly side of Bayou Crocodile; that it was so occupied when his children sold it to St. Amand, who is alleged in the act of sale to have had a perfect knowledge of the location.

Among the first acts of St. Amand, in reference to his new purchase, was the claim before referred to, which bounds the land on Bayou Crocodile, also to procure an accurate survey of the same, as appears by a transcript of the Land Office before cited. This shows that St. Amand accompanied the Surveyor, who, in his return, says: "I went in company with the said applicant (St. Amand) to explore the Bayou Crocodile, from which the front takes its start," &c. And he concludes "so that he (St. A.) finds himself bounded by marshes and floating prairies, the *Bayou des Cannes* and Crocodile Bayou," &c. This would seem to be conclusive on St. A., and those claiming under him. Indeed they should be estopped by it. The real estate, &c., of St. Amand was sold by his personal representative in December, 1848, to F. M. Ward, including this vacherie, which, in the conveyance, is described as lying "about nine miles from the river, measuring about twenty-eight arpents, front on the Bayou Crocodile," &c., (rec.. p. 12,) and on the 5th of August, 1848, the representative of Ward sold the property to Wm. Polk, who, on the 7th of October, 1848, sold three fourths of the same in common to the plaintiff. In the deed the vacherie is described as "measuring about twenty-eight arpents front on the Bayou Crocodile," &c., (rec. p. 19,) and on the 12th of December, 1854, the other fourth was sold to the plaintiff with the same description, (see rec. p. 22.)

The plaintiff thus took it as all his predecessors held it, with this Bayou Crocodile as its northern or eastern boundary, although he now finds the grace and modesty to contend for a tract that overleaps it. In his dealings with this demesne, and while he held in common with his grantor, Wm. Polk (p. 58,) says that the plaintiff and himself procured one Powell to survey the lands in 1853, east of Bayou Crocodile; that they were public lands; that they were run off into quarter sections so as to locate squatters on them to hold them for Lanfear (Plaintiff) and Polk, and that they placed seven squatters on the land. And this is the land now claimed by the plaintiff as covered by the Toups grant, which, Polk says, was represented and did in fact lie southerly or westerly of Bayou Crocodile. Wm. Fisher (p. 104) says that Polk told him that the land claimed by Lanfear (plaintiff) and himself all lay south of Bayou Crocodile, and that the land on the north side belonged to the Government, and that they (Lanfear and Polk) had hired men to go on to and occupy this Government land for them.

This analysis of the evidence contained in the record seems to conduct to the inevitable conclusion that the grant to Paul Toups was of land fronting on Bayou Crocodile and running southerly. He asked to have it commence there; he located it there; that St. Amand so understood it and caused it to be so claimed and surveyed, and disclaimed owing land north of it; that his representative sold and conveyed it with that boundary; tha Ward and Polk took it so bounded; that it was by two deeds conveyed to the plaintiff so bounded; that the plaintiff was party to a new survey with the same boundary, and that finally he caused the lands which he now claims under the Toups grant to be preempted as public lands, because they were not covered by the Toups grant.

It would seem that these solemn acts of his, together with the solemn acts in deed, and in pais, of every party under whom he claims, back to the source of title, should preclude his asserting here to the contrary, and conclude this controversy.

To this testimony, and in avoidance of the result to which it can only conduct, the plaintiff opposes his own written memorial—the report of Mr. Benjamin, in the Senate, accompanying the bill for the relief of the plaintiff, cited herein before; and the decision of the Surveyor General of Louisiana, in the record and the argument of Mr. Janin, in the Land Office.

Whatever argument may be found in any or all of these productions, is more than met by the decision of the Commissioner of Public Lands, (p. 45,) and the conclusive reasons given by the District Court below, for its judgment in this case, (p. 66,) and adopted by the Supreme Court of Louisiana, to which I respectfully ask the attention of the Court.

In conclusion, I submit, that inasmuch as the plaintiff and defendant once agreed in asserting the land in dispute, to have been "public land," and as that is the decision of the General Land Office, and as it is clear that it was never granted away by the Spanish Government, nor the Government of the United States, and as the parties also further agree that the defendant is in possession of it, under a full compliance with the pre-emption laws of the United States, the judgment of this Court, should affirm that of the Supreme Court of Louisiana.

Respectfully submitted,

A. G. RIDDLE,

For Defendant.

Supreme Court of the United States.

DECEMBER TERM, 1866.

No. 25.

AMBROSE LANFEAR, PLAINTIFF IN ERROR,

vs.

H. L. HUNLEY.

Brief of Counsel for Plaintiff in Error.

STATEMENT OF THE CASE.

This case comes up on writ of error to the Supreme Court of the State of Louisiana. It is contended by the plaintiff in error that that court erroneously decided *against his title* to a tract of land which had been confirmed— *First*, under the act of 3d of March, 1807, (Am. State Papers, Public Lands, vol. 2, p. 324;) *second*, by the act of 12 April, 1814; and *third*, by the act of 11 May, 1820, (Am. State Papers, Public Lands, vol. 3, p. 225.)

The two first confirmations were to the children of Paul Toups, and the last was to Daspit St. Amand. St. Amand having purchased from the heirs of Paul Toups, and not being aware of the confirmation by the old board, presented it to the board constituted by the law of Feb. 27, 1813. The land had not been surveyed under the Spanish Government, and therefore, by the 9th section of the act of 1807, it was required to be surveyed under the directions of the Surveyor General. This, however, was not done till 1854. The New Orleans and Opelousas R. R., which was then opened through it, made the land a tempting prize to speculators. Large numbers rushed upon it, apparently by concert, and among other squatters upon it the defendant, Hunley, a lawyer of New Orleans, seized upon a part of it. The organization, without notice to Lanfear, appealed to the General Land Office to have the survey set aside, and they succeeded so far as to procure the disapproval of the survey as to that part of it

which included Hunley's settlement. An appeal was taken by Lanfear to the Secretary of the Interior, but whilst that was pending the survey was ratified by the act of Congress of the 18th August, 1856, inserted in p. 135 of the record.

The Supreme Court of Louisiana construed this act so as to allow the defendant, Hunley, to defeat the plaintiff's action merely by showing that he had taken the initiatory steps to obtain a pre-emption, saying (p. 68) that "the confirmation of 1856 to Ambrose Lanfear contains an express reservation in favor of the settlers, authorizing them to test the validity of the surveys and the extent of the grant to Paul Toups and St. Amand, and there is an admission on the record that H. L. Hunley had all the qualifications required by the United States to acquire under the pre-emption laws, and that the portion of land which he occupies is on the north side of Bayou Crocodile," where the court held, in another portion of its opinion, that the survey ought not to have been extended.

POINTS.

The plaintiff maintains that this ruling was erroneous, because—

1st. The land had been confirmed by the commissioners under the act of 1807, as appears by their report of 9th January, 1812, (2 vol. Am. State Papers, p. 324,) and ordered to be surveyed by the Surveyor General of Louisiana; which being done by Hawke in 1854, and approved by the Surveyor General, and ratified by Congress, though disapproved by the Commissioner of the Land Office, it related back to the date of confirmation, more than forty years before the settlement by Hunley.

2d. Because the title of Lanfear was a complete title, whilst that of Hunley was inchoate.

On the first point we observe that the court treats the act of 1856 as one confirming or granting title, and not merely an act affirming the survey made in pursuance of the grant by the officer named in the act of 1807, to make it. Is it not repugnant to the grant and inconsistent with it to except from its operation a tract of land lying within the out-boundaries of the survey, as recognized by the act of '56 itself, as the out-boundaries of that survey? Is not that condition essentially a nullity which undertakes so to modify a survey made in satisfaction of an old grant, as to affirm the out-boundaries, and yet admit of part of the land

in the interior of the survey being held by parties holding under pre-emption claims founded on settlements made more than forty years after the confirmation or grant by the government? It is impossible, in the nature of things, that Lanfear can be established in his boundaries on his northern line, and yet that Hunley can have a valid claim in the middle of the grant. As already shown, the act of 1807, under which this land was confirmed, made it the duty of the Surveyor General of Louisiana to set apart the land. This was an executive function, and this mode of determining the extent of the grant was part of the grant itself. (See West vs. Cochran, 17 Howard, 403.) The proviso of the act of '56 ought not to be construed inconsistently with this principle, so as to admit of the destruction of the grant by local tribunals.

2. But if this act authorizes a settler of 1854 to assert his title against a concession of 1796, confirmed by the act of 1807, as surveyed under the supervision, and approved by the Surveyor General, and ratified by Congress, the act certainly does not change the law as settled by this court—that only such settlers as have perfected their titles can contest the perfect title presented by the plaintiff in error. (See case of West *vs.* Cochran, above cited.)

The *first* proviso of the act of 1856 declares "that such confirmation shall only be construed into a relinquishment of title on the part of the United States, and shall not affect the rights of third persons claiming title, either under adverse title, or as pre-emption." The *second* proviso does not vary the legal effect of the first, or add to it. Allowing any person now settled on the land to maintain an action to test the validity of said surveys, &c., it declares it to be "the true intent and meaning of this act that no person who would now be entitled to a right of pre-emption to any part of the said land, if the same were the property of the United States, shall be deprived of the same, unless it is judicially decided that the said surveys were made in conformity with the legal right of Ambrose Lanfear, under the said confirmation." This is fully expressed in the first proviso; and, therefore, the second proviso is but an amplification and explanation of the first. The meaning of both is that persons clothed in due form of law with a title, claimed through pre-emptions, shall be allowed to maintain an action to test in the

courts the question whether the survey was rightfully extended over the land occupied by the pre-emptor. But this does not remit to the courts the duties devolved by law on the land office to enquire whether the claimants by pre-emption had complied with the conditions prescribed by law to entitle them to patents as pre-emptors. The admissions on the record, by the plaintiff, that Hunley was a qualified pre-emptor, and had complied with the pre-emption laws in every respect, does not meet the objection. The point, we make, has respect to the grade of title. It may be that the defendant has an equitable right. It was affirmed, for the sake of the argument, in the West and Cochran case, that plaintiff had an equitable right, but he had no patent, and even though he had, by the laws of Missouri, that grade of title which authorized him to maintain ejectment, it was decided by this court that the merits of the case were not open as between parties, one of whom had a complete title by law, and the other had merely a confirmation or incomplete title, to perfect which other acts of the government were required. See also Bragnell *vs.* Broderick, 13 P., 450. In this case the plaintiff in error has a complete legal title. The defendant, on the other hand, shows nothing but that we have admitted his possession and his capacity to become a purchaser from the government, if the land is public land. It is true that the special law requires the courts to protect him, if he shows himself entitled to a pre-emption; yet, having turned over to the land officers of the government the enquiry whether such parties are entitled to pre-emption, he must bring before the courts the judgment of the tribunal having jurisdiction to determine that question, before the court can be legally informed that he is entitled to protection as a pre-emptor, or be called upon to extend it to him. This can only been done by exhibiting to the court the patent granted in virtue of such settlement, not admissions by his opponent in this case that he possesses the qualification, and has performed the conditions prescribed by law.

The land office alone has jurisdiction to determine these matters, and it is its conclusions of law and fact, not evidence which it may be supposed by the plaintiff, or any one else, would induce any conclusions in that department, which must be produced in court to authorize the court to go behind the complete title of the plaintiff in error.

If the court should not find sufficient reason for reversing the judgment of the state court, in considering the points above presented, and should go into its finding on the facts upon which said court decided against our title, we call attention to the argument on the subject of location, contained in the record, and also to that of Mr. Janin, presented to the Secretary of the Interior.

In addition to the considerations there presented, we beg leave to say that it seems to us that the land department and the state court paid altogether too much attention to the testimony for the defence, in relation to certain objects supposed to be called for as boundaries in the concession, which testimony the state court itself declared to be a mass of contradictions, and too little to the positive testimony of the venerable General Plauche and other prominent citizens of the country, who swear positively to the actual occupation of the disputed tract by St. Amand, with claim of title. If it be admitted that the call, as explained by the testimony for the defence, would best be satisfied by limiting St. Amand's claim to what is now called Bayou Crocodile, it must be admitted, on the other hand, that the testimony for the plaintiff, in reference to these calls, shows very good grounds for its extension north of that bayou. As the testimony in regard to these calls would therefore authorize the location either north or south of the bayou, it is manifest that the possession should be controlling in locating the survey; and when this is proven positively by such a character as General Plauche and other eminent citizens, and was adopted by the surveyor who went upon the ground to make the survey, and approved by the Surveyor General, resident in the immediate vicinity, there ought to be no further question on the subject.

M. BLAIR,
F. A. DICK,
For Plaintiff in Error.

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Supreme Court of the United States.

AMBROSE LANFEAR, Plaintiff in error,

VERSUS

H. L. HUNLEY.

ARGUMENT FOR DEFENDANT IN ERROR.

Commercial Bulletin print., 114 Poydras and 35 Front Levee streets.

Supreme Court of the United States.

AMBROSE LANFEAR, Plaintiff in error,

VERSUS

H. L. HUNLEY.

ARGUMENT FOR DEFENDANT IN ERROR.

This is a writ of error to the Supreme Court of the State of Lousiana.

In this paper only so much of the pleadings and evidence in the Record will be noticed, as will show that the Court has no jurisdiction in this case, under the 25th Section of the Judiciary Act.

The plaintiff in error, who was also plaintiff below, brought this "petitionary action" in 1859, in a District Court of the State of Louisiana. His petition sets forth that he is the owner of different tracts of land under various titles, that the defendant Hunley has settled and is committing waste on said land, and concludes by praying to be declared the true owner of said land and quieted in his possession.

The defendant denied that the land possessed by him

was the property of the plaintiff, and avered that it was public land of the United States, upon which he had acquired a preëmption right by actual settlement, etc. This suit was decided against Lanfear, by the District Court, (66.) and also on appeal by the Supreme Court of the State. (137.)

The plaintiff then sued out a writ of error to this Court, alleging (146,) that there were such errors in the decision of the Supreme Court of the State, as could be corrected by this Court under the 25th Section of the Judiciary Act of 1789. (2 Stat. at Large, 85.)

The grounds upon which the plaintiff in error attempts to show that this Court has jurisdiction in the present case, are the following:

He claims the land in dispute under the confirmed Spanish claim of the "children of Paul Toreps." This claim was surveyed by a United States deputy surveyor, in such a manner as to include the land possessed by the defendant in error. This survey was approved by the surveyor, who explained the grounds of his approval in a communication to the General Land Office of Sept. 1st, 1855, (74). On the 25th of January, 1856, the commissioner of the General Land Office decided (45) that this survey must be restricted to land, to the south of Bayou Crocodile, and that Mr. Lanfear could not legally claim any land north of Bayou "Crocodile," to the injury and prejudice of settlers or others who may be entitled to preëmption.

Lanfear then applied to Congress for the confirmation of the survey approved by the Surveyor General,

and disapproved by the Commissioner of the General Land Office. Upon this application a favorable report was made by the committee on private land claims of the Senate (73), which led to the passage of an Act of Congress, approved on the 18th of August, 1856 (11 Stat. at Large, 473,) entitled "An Act for the relief of Ambrose Lanfear of Louisiana."

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the surveys of claim number seventy-four, known as the claim of the children of Paul Toreps, and of claim number five hundred and twenty-nine, known as the claim of Daspit St. Amand, executed by Maurice Hauke, United States Deputy Surveyor, and approved by William J. McCulloh, United States Surveyor General for the State of Louisiana, on the fifth day of May, eighteen hundred and fifty five, be, and the said surveys are hereby confirmed in favor of Ambrose Lanfear, for the land embraced within the said surveys hereby confirmed; *Provided*, that such confirmation shall only be construed into a relinquishment of title on the part of the United States and shall not affect the rights of any third persons claiming title, either under adverse title or as preëmptor; *And provided further, that any person or persons, who are now settled on the said lands, or any portion of the lands embraced in the said surveys, shall be entitled to have and maintain an action to test the validity of said surveys*, and the extent of the said claims of the children of Paul Toreps and of Daspit St. Armand, numbers seventy-four and five hundred and

twenty-nine, and to have the same determined judicially in the same manner, as though the land on which they are settled had been surveyed as public land, and they had been permitted to enter the same by way of pre-ëmption, it being the true intent and meaning of this act that no person who would be now entitled to a right of preëmption to any part of said land, if the same were the property of the United States, shall be deprived of the same, unless it is judicially decided that the said surveys were made in conformity with the legal rights of said Ambrose Lanfear, under the said confirmation."

"Approved August 18th, 1856."

The meaning of this very perspicuous act could only be obscured by an attempt to explain it. If any settler was established upon a portion of the land so surveyed, which, by a judicial decision should be found to be improperly included in such survey, and not to have been protected by the confirmation, the rights of the settler were reserved and not affected by this act. This act referred it to the Courts to decide what land really passed under the confirmation of the two claims, and whether the survey was in pursuance of the confirmation or not.

It is expressly admitted that Hunley was such a settler as was contemplated in the above act. (136)

In obedience to this act the Courts of Louisiana took cognizance of the matters delegated to them, and in accordance with the opinion of the General Land Office, (45) held (66, 137), that the confirmation of the claims extented to no part of the land *north* of the Bayou

Crocodile represented in the survey, that Hunley was settled *north* of Bayou Crocodile, that he was therefore one of the settlers, to whom the act of August 18th, 1856, did not apply, and that therefore judgment must be given against Lanfear and in favor of Hunley.

These are absolutely the only matters decided by the Supreme Court of the State, and it would be an idle attempt to prove that they do not fall under any of the provisions of the 25th section of the judiciary act.

It is therefore submitted that this writ of error must be dismissed, without any examination of the merits of the case.

Respectfully submitted,

LOUIS JANIN,

Of Counsel for Defendant in error.